No. 94-1827

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

JOHN O. ZIPPERER, JR., an individual,

Petitioner,

vs.

THE CITY OF FORT MYERS, a chartered municipality and political subdivision of the State of Florida; FORT MYERS CITY COUNCIL, as the Governing Authority of Improvement District No. 10, Northeast Colonial Sewer and Water Assessment District; FORT MYERS CITY COUNCIL, as the Governing Authority of Improvement District No. 15, Omni Interstate Park; FORT MYERS CITY COUNCIL, as the Governing Authority of Improvement District No. 17; IMPROVEMENT DISTRICT NO. 10, NORTHEAST COLONIAL SEWER AND WATER ASSESSMENT DISTRICT; IMPROVEMENT DISTRICT NO. 15, OMNI INTERSTATE PARK; IMPROVEMENT DISTRICT NO. 17; LEE COUNTY, a political subdivision of the State of Florida; COLONIAL ROAD EXTENSION IMPROVEMENT SPECIAL DISTRICT BOARD, as the Governing Authority of the Dependent Special District known as Colonial Road Extension Improvement Special District; COLONIAL ROAD EXTENSION IMPROVEMENT SPECIAL DISTRICT,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION OF RESPONDENT, CITY OF FORT MYERS

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On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION OF RESPONDENT, CITY OF FORT MYERS

STATEMENT OF THE CASE

Zipperer alleges to be the holder of a mortgage interest in certain real property owned by P. Gerald DeSimone, as trustee, and more particularly described in the mortgage deed which was executed on August 14, 1986. (See Appendix 1).

The City of Fort Myers, acting through its City Council, pursuant to *Florida Statutes*, Chapter 166 and 170, after petition from the property owners, created by resolutions, Special Assessment Districts 10, 15, and 17. District 10 was created September, 1986, for the construction of local sanitary transmission mains, lift stations, and water transmission mains. District 15 was created in October, 1988, for the construction of a water distribution system, waste water collection system, and paving improvements. District 17 was created in November, 1988, for the design and installation of roadways. On February 2, 1987 and December 17, 1988, the property owners in the geographical area affected by the improvements entered into agreements with the City of Fort Myers for obtaining the levy of a special assessment to pay for these improvements. Accordingly, the Districts were created by resolutions to carry out the agreements sought by the landowners. All of the aforementioned districts encompass the real property in which Zipperer formerly held a mortgage interest.

Through resolutions, the City Council levied special assessments against the mortgaged property for the purpose of conferring benefits to the property as set forth above. Prior to the levy of the assessments, *the property owners on the assessment rolls for each district were provided with actual written notice* of the public meetings held by

the City Council so that they, as well as the general public, could be heard on the issue of the propriety and advisability of the improvements, the assessments and the method therefor. The notice to landowners was made in accordance with the requirements of Section 170.07, *Florida Statutes*. The City duly published, in a newspaper of *general circulation*, notices of the final public equalization hearings for all three (3) special assessment geographical areas prior to levying the lien. Duly passed equalization Resolutions were entered by the City of Fort Myers, after public hearing on March 7, 1988 for Special Assessment District No. 10, May 15, 1989 for Special Assessment District No. 15 and May 15, 1989 for Special Assessment District No. 17. (See Appendix 4).

The Petitioner, ZIPPERER, purchased the property at issue in this litigation at a Clerk's sale, following his foreclosure of the purchase money mortgage given him by Gerald DeSimone.

At the time Mr. ZIPPERER commenced his state court mortgage foreclosure action, and at the time that he acquired title to the property, the liens, which he now attacks on constitutional grounds, were of record, having been created by the CITY OF FORT MYERS pursuant to Chapter 170, *Florida Statutes*. The liens secure the repayment of bond proceeds used to place public improvements on the property[1] in an amount limited to the value contributed to the property by those improvements.[2] Although, interestingly

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[1] 170.01, Florida Statutes, provides that a municipality may provide for the construction of improvements, and "provide for the payment of all or part of the costs of any such improvements by levying and collecting special assessments on the abutting, adjoining, contiguous, or other specially benefitted property".

[2] §170.01(2), Florida Statutes provides that "special assessments may be levied only for the purposes enumerated in this

enough, Mr. ZIPPERER contends that these improvements are now of no value. He has no basis in fact for such an irrational and illogical conclusion. He fails to mention that the improvements were requested by the then property owner and found to be in the public interest by the Fort Myers City Council. (See Resolutions equalizing the assessments and imposing the lien at Appendix 4). He does not contend that they were not properly constructed nor does he contest the fact that funds guaranteed by the public taxpayers were spent for their construction.

The CITY OF FORT MYERS has provided improvements to the property including water and sewer facilities at an estimated cost of up to $13,000,000.00; roadways and paving, at an estimated cost of $10,900,000.00; and the improvement of roadways adjacent to the special assessment district at an estimated cost of $6,017,000.00. Although these improvements are now firmly ensconced on his property, Mr. ZIPPERER does not wish to pay for them.

In each instance, the Petitioner concedes that the procedures required by Florida law were followed. Specifically, the public was provided with published notice of the proposed creation of special assessment districts.[3] The

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section and shall be levied only on benefitted real property at a rate of assessment based on the special benefit accruing to such property from such improvements when the improvements funded by the special assessment provide a benefit which is different in type or degree from benefits provided to the community as a whole.

[3] §170.03, Florida Statutes requires that a municipality publish, in a newspaper of general circulation, notice which includes a description of the nature of the proposed improvements, a designation of the type and location of improvements,

assessments were established at a public meeting, at which input from the public was allowed, and the liens were placed of record before the Petitioner, ZIPPERER, acquired the property at a foreclosure sale.[4] In each case, the Petitioner concedes that his mortgagor, the then owner of the parcel, Mr. DeSimone, was provided with actual written notice of the CITY's consideration of the creation of special assessment districts, and all other notices required by Florida law.[5] The Petitioner nowhere alleges that the owner, or anyone else, objected to the assessment liens which the Petitioner concedes were recorded in order to secure the repayment of bond proceeds used to install these public improvements on the property.

Rather, Mr. ZIPPERER asserts that he holds a property right (a mortgage lien) which was subordinated to the special assessment lien pursuant to Section 170.09, *Florida Statutes*. The effect of the statute, he alleges, was to subordinate the first mortgage lien which he has now foreclosed and reduced to fee simple title, in violation of

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the estimated cost of the improvements, and the manner in which assessments shall be made. Compare §170.04, 170.03, Fla. Stat.

[4] §170.08, Florida Statutes requires that the City Clerk record, in the "improvement lien book" a record of the lien. These liens are also placed in the public records of Lee County, Florida.

[5] Compare §170.06, Florida Statutes, which requires that "ten days notice in writing . . . shall be given to . . . property owners" advising them of the proposed imposition of special assessment liens, the nature of the improvement, and the cost thereof.

his property rights guaranteed under the state and federal Constitutions.

This is so, he asserts, because actual written notice, nowhere required by Florida law, is nonetheless mandated by the due process provisions of both the United States Constitution and the Constitution of the State of Florida.

SUMMARY OF THE ARGUMENT
REASONS FOR DENIAL OF WRIT

The CITY OF FORT MYERS provided millions of dollars of funding, through bond proceeds, to pay for public improvements to real property on which the Petitioner had a mortgage lien. Pursuant to Florida law, and duly adopted and enacted state statutes and city ordinances, notice was provided to the owners of the affected property, and to the public at large. By Statute, the special assessment liens are limited to the value contributed to the property by the public improvements, and are given priority over existing liens and encumbrances. The Petitioner has now acquired the improved property, through foreclosure, and objects to the priority of the special assessment lien given as security to pay for those improvements, although that priority exists to protect Florida taxpayers.

Mr. ZIPPERER asserts that his Fourteenth Amendment due process rights were violated, not by any failure to follow the law of Florida, but by Florida law itself. He asserted below that the failure to provide actual notice to

mortgagees, prior to the adoption and imposition of special assessment liens, denied him the type of notice guaranteed by the Fourteenth Amendment to the United States Constitution. The lower courts have properly rejected his claims.

Mr. ZIPPERER concedes that he retains a plain, speedy and efficient remedy to assert his objections in state court, through foreclosure or otherwise. In fact, the actual foreclosure of the special assessment liens are presently pending in state court. Mr. ZIPPERER's only "property right", under Florida law, remains extant, and is unaffected by the CITY's exercise of its rights under *Florida Statutes*, Chapter 170. Mr. ZIPPERER has not been deprived of his mortgage; he has exercised his right as a mortgagee and has converted that mortgage lien into fee simple title. Any right of "reforeclosure" to contest the priority of the CITY's liens remains available to him under Florida law.

The Petitioner has not presented a colorable claim that his due process rights have been violated, because he has not been deprived of a constitutionally protected property interest, and because, as a matter of law, Florida's special assessment scheme meets constitutional muster. *Utley v. City of St. Petersburg*, 292 U.S. 106 (1938). Foreclosure of these liens, however, requires written notice to all interested parties pursuant to *Florida Statutes*, Chapter 173. (Appendix 2).

The attempt to expand the "regulatory taking" analysis to this dispute must fail, since Mr. ZIPPERER has not been deprived of any use of property, nor has he availed

himself of the available remedies for any possible deprivation which may have occurred, now available under Florida law. Mr. ZIPPERER's reliance upon *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1988) is misplaced, since the facts of that case are more akin to a foreclosure than to the imposition of a lien.

Finally, since Mr. ZIPPERER has concededly foreclosed his mortgage in prior, state court litigation; and has acquired title to the property subject to the prior, recorded special assessment liens, the Eleventh Circuit Court of Appeals properly concluded that his claim of deprivation of his mortgage lien failed to state a cause of action upon which relief could be granted.

For all of these reasons, the Petition for Certiorari should be denied.

ARGUMENT

The proper characterization of the issue is whether the appellate court properly concluded that the Petitioner failed to state a cognizable constitutional claim, since the CITY OF FORT MYERS has neither deprived Mr. ZIPPERER of a "property interest", nor has his "chose in action" been foreclosed from being properly presented in the state court.

The first inquiry was properly directed to whether the Petitioner alleged the existence of a constitutionally protected property interest. Compare *Key West Harbor v. City of Key West*, 987 F.2d 723 (11th Cir. 1993). Property

interests are not created by the United States Constitution, but rather are "created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law". *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). Under Florida law, Mr. ZIPPERER's mortgage lien is not an interest in real property, *United of Florida, Inc. v. Illini Federal Savings & Loan Association*, 341 So.2d 793, 794 (Fla. 2d DCA 1977), but rather creates a choice in action enforceable through foreclosure. Compare *Grieser v. Division of Administration*, 371 So.2d 164, 165 (Fla. 2d DCA 1979). The Florida Supreme Court, in considering the nature of this interest, has held that failure to give actual notice of condemnation proceedings to a mortgagee is harmless error, because "a mortgagee has no estate or title to lands taken by eminent domain; a mortgagee has rather a specific lien for the debt secured by the mortgaged property." *Washington Federal Savings & Loan Association v. Dade County*, 221 So.2d 790, 791 (Fla. 3d DCA 1969), see also *Shavers v. Duval County*, 73 So.2d 684, 687 (Fla. 1954).

Under Florida law, Mr. ZIPPERER had, before foreclosure, a choice in action allowing him to resort to the state courts and enforce his lien claim through foreclosure. That right remains, and is unaffected by the CITY's exercise of its right under *Florida Statutes*, Chapter 170. Thus, even if a cause of action is a species of property protected by the Fourteenth Amendment, *Logan v. Zimmerman Brush Company*, 455 U.S. 422, 428 (1982), *Tulsa Collection Services v. Pope*, 485 U.S. 478 (1988), that right has not been extinguished by the imposition of tax liens. Mr. ZIPPERER concedes that, under Florida law, he has, and retains, the right to foreclose and reforeclose his lien.

If that is so, no "constitutional right" has yet been lost by reason of the CITY's application of a *Florida Statutes*, Chapter 170 lien.

The Petitioner contends his right to due process, as provided under the Fifth and Fourteenth Amendments to the United States Constitution and the Florida Constitution, was abridged by the Respondent's failure to provide him with actual notice of the pendency of assessments against the mortgaged property. He argues that this is particularly so because Section 170.09, *Florida Statutes*, provides that a special assessment lien will be co-equal with liens of other taxes and superior to all other liens such as that held by the Petitioner. However, this specific argument was raised and rejected in a recent case involving similar facts of *Federal Deposit Insurance Corporation v. City of New Iberia*, 921 F.2d 610 (5th Cir. 1991), inasmuch as the Fifth Amendment guarantees due process only to those individuals **deprived** of life, liberty or property. (A copy of *New Iberia* is set forth in full in Appendix 3). See also, *Federal Deposit Insurance Corp. v. Morrison*, 747 F.2d 610, 613 (11th Cir. 1984).

In *City of New Iberia, Id.* the plaintiff objected to the imposition of a special assessment lien that had statutory priority over its pre-existing mortgage lien for a paved street and sewage system. The Plaintiff argued that the imposition of the lien was done in violation of the due process clause of the Fourteenth Amendment to the United States Constitution and the imposition of the assessment constituted a "taking" without prior notice due to the fact the special assessment became a superior lien under Louisiana law. In *City of New Iberia, Id.* as in

the present case, the municipality conducted public hearings regarding the improvements and provided no direct written letters giving notice of the hearings to mortgagees of the subject properties.

In concluding the mortgagees' right to due process had not been contravened, the Fifth Circuit held that special assessments do not constitute a "deprivation" or a "taking" of property due to the fact a benefit inures to each parcel of real estate effected. *Id.* In fact, it was noted a municipality may impose a special assessment lien upon property without the benefit of even holding a public hearing and no denial of due process occurs. Compare *Sager v. Burgess*, 350 F.Supp. 1310 (E.D. Penn. 1972).

The Petitioner has attempted to argue the instant action is controlled by *Mennonite Board of Mission v. Adams*, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983), which sets forth the broad proposition that a mortgagee is entitled to notice reasonably calculated to apprise him or her of a pending tax sale because, under Indiana law, a mortgagee possesses a protected property interest that is adversely affected by a tax sale. 462 U.S. at 798. The Supreme Court accordingly held that a state may not conduct a tax sale of property without first mailing notice to any interest holder, such as a mortgagee, who is reasonably identifiable in public records. *Id.*

In *City of New Iberia*, the Fifth Circuit recognized the *Mennonite* opinion and its "far-reaching requirement of notice to property owners adversely affected by state action" and noted the case did not analyze what specific state action would constitute a "deprivation" of property

so as to trigger that requirement of actual notice to mortgagees. 921 F.2d at 614. The Court concluded that local tax assessments do not contravene the Fourteenth Amendment unless they amount to such an abuse as to be an outright confiscation of property by conferring absolutely no benefit to a landowner. *Id.* See also, *French v. Barber Asphalt Paving Company*, 181 U.S. 324, 21 S.Ct. 625, 45 L.Ed. 879 (1901); *Wight v. Davidson*, 181 U.S. 371, 21 S.Ct. 616, 45 L.Ed. 900 (1901); *Town of Tonawanda v. Lyon*, 181 U.S. 389, 21 S.Ct. 609, 45 L.Ed. 908 (1901); and *Furey v. City of Sacramento*, 780 F.2d 1448, 1454 (9th Cir. 1986). Therefore, the Court held the due process requirement of actual notice to mortgagees pronounced in *Mennonite* is not applicable to special assessments. See 921 F.2d at 615. Because a mortgagee is not deprived of his property by the assessment of a special improvement lien, the due process clause is not triggered and no issue of constitutionally adequate notice arises. *Id.*

Further support for this position is found in *Wagner v. Leser*, 239 U.S. 207 (1915). In *Wagner*, a public highway was improved and a special tax was imposed on the abutting landowners who challenged the action based on the fact they were given no opportunity to be heard as to the matter and the benefits conferred upon them, and the proper adjustment of the taxes among the property owners. In summarizing the state of law on this subject, the Supreme Court observed: " . . . We think such a tax, when levied by the legislature, did not require notice and a hearing as to the amount and extent of benefits conferred in order to render the legislative action due process of law within the meaning of the Federal Constitution," 239 U.S. at 218. Likewise, in *Withnell v.*

Ruecking, 249 U.S 63, 39 S.Ct. 200, 63 L.Ed. 479 (1919), the Supreme Court found that a lien could be placed on property for the cost of paving a portion of the public street without benefit of advance notice of hearing. 249 U.S. at 70.

Moreover, as concerns the assessments imposed by the City in the present case, it must be reiterated that the landowners specifically requested the improvements for which the assessments were levied. Because the Petitioner's interest in the property is derivative from that of the owner, he may not challenge the assessment. *City of New Iberia*, 921 F.2d at 615-616. "To allow the mortgagee to assert an unconstitutional taking because of the special assessment sought by the landowner would allow the mortgagee to receive whatever benefits did result from the improvements without having to pay for them." *Id.*

In *Utley v. City of St. Petersburg*, 292 U.S. 106 (1938), the United States Supreme Court examined the Florida special assessment provisions. It held that the manner in which the special assessments at issue were adopted under Florida statutory procedures failed to constitute a violation of due process. It must be concluded, based upon the foregoing, that the Respondent was not under an obligation to provide direct written notice to the Petitioner of the various special assessments levied by District 10, District 15, and District 17. Accordingly, no deprivation of the Petitioner's constitutional rights occurred and the Petition for Certiorari should be denied. It should also be noted that Petitioner has not asserted, nor could he assert that he had no actual notice of the City's intention to impose the lien.

CONCLUSION

The due process clause of the Fourteenth Amendment does not require the CITY to give prior written notice to a mortgagee, where there is a duly advertised, public hearing prior to the levy of special assessments and creation of a lien.

The decision of the Eleventh Circuit Court of Appeals' opinion below does not conflict with this Court's opinion in *Mennonite*. The imposition of a special assessment lien is not analogous to a tax sale, whereas, a foreclosure of the lien would be and heightened notice requirements would then be required and are then required under Florida law.

Respectfully submitted,

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APPENDIX

I.

Respondent adopts the Appendix of Petitioner in its entirety, A through E.

II.

APPENDIX 1 – The mortgage agreements between John O. Zipperer and Gerald DeSimone.....App. 1

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APPENDIX 1

THIS MORTGAGE DEED

(Filed Dec. 9, 1986)

2137677

EXECUTED the 14th day of AUGUST, A.D., 1986,

BY P. GERALD DeSIMONE, Trustee, hereinafter called the Mortgagor,

TO JOHN O. ZIPPERER, JR., hereinafter called the Mortgagee,

WITNESSETH, that for divers [sic] good and valuable considerations, and also in consideration of the aggregate sum named in the promissory note of even date herewith, hereinafter described, the said Mortgagor, does grant, bargain, sell, alien, remiss, release, convey and confirm unto the said Mortgagee, in fee simple, all that certain tract of land, of which the said Mortgagor is now seized and possessed, and in actual possession, situate in Lee County, State of Florida, described as follows:

A tract or parcel of land lying in Sections 22, 26, and 27, Township 44 South, Range 25 East, City of Fort Myers, Lee County, Florida which tract or parcel is described as follows:

Beginning at the northeast corner of said Section 27, run North 00° 49' 21" West along the east line of said Section 22 for 1,324.13 feet to a point on the southwesterly right-of-way line (75 feet from the centerline) of Immokalee Road (SR No. 82); thence run North 70° 34' 58" West along said line for 1,219.39 feet to a point on the right-of-way for Interstate 75 (SR No. 93); thence run along said line North 79° 06' 49" West for

606.71 feet, North 70° 34' 58" West for 400.00 feet, North 89° 25' 21" West for 151.74 feet and North 70° 34' 58" West for 132.84 feet to a point on the Limited Access Right-of-Way for said Interstate 75; thence run along said Limited Access Right-of-Way line North 70° 34' 58" West for 298.15 feet, North 72° 24' 39" West for 498.45 feet, North 89° 15' 38" West for 113.48 feet and South 57° 07' 35" West for 47.84 feet to an intersection with the west line of the East 660 feet (as measured on a perpendicular) of the southwest quarter (SW 1/4) of said Section 22; thence run South 00° 42' 36" East along said west line for 2,294.17 feet to the south line of said southwest quarter (SW 1/4); thence run North 89° 32' 16" East along said south line for 660.01 feet to the southeast corner of said southwest quarter (SW 1/4); thence run South 00° 50' 58" East along the West line of the northeast quarter (NE 1/4) of said Section 27 for 2,635.16 feet to the southwest corner of said northeast quarter (NE 1/4); thence run South 89° 23' 30' West along the north line of the southwest quarter (SW 1/4) of said Section 27 for 1,323.67 feet to the northwest corner of the east half (E 1/2) of said southwest quarter (SW 1/4); thence run South 00° 53' 23" East along the west line of said east half (E 1/2) for 1,604.88 feet to an intersection with the Limited Access Right-of-Way line of said Interstate 75; thence run along said Limited Access Right-of-Way line south 28° 42' 11" East for 264.00 feet, South 32° 50' 52" East for 413.32 feet, South 33° 13' 47" East for 149.62 feet, South 46° 54' 03" East for 158.80 feet, South 74° 14' 36" East for 158.83

feet, South 84° 22' 18" East for 323.67 feet and North 89° 10' 20" east for 1,167.60 feet to the end of said Limited Access Right-of-Way line; thence run North 89° 08' 16" East along the Right-of-Way line for said Interstate 75 for 227.83 feet to the Southwest corner of the "Westerly Parcel" of those parcels described in deed recorded in Official Record Book 1608 at page 24, Lee County Records; thence run along the perimeter of said "Westerly Parcel" North 08° 59' 01" West for 90.00 feet, North 46° 30' 59" East for 315.00 feet, North 83° 15' 59" East for 170.00 feet, South 67° 59' 01" East for 165.00 feet and South 32° 29' 02" East for 300.22 feet to said right-of-way line for Interstate 75; thence run North 89° 08' 16" East along said line for 115.05 feet to the southwest corner of the "Easterly Parcel" as described in said deed; thence run along the westerly line of said "Easterly Parcel" North 14° 00' 59" East for 1,205.00 feet, North 14° 59' 01" West for 575.00 feet and North 35° 48' 38" East for 958.11 feet to the Northeast corner of the Southeast quarter (SE 1/4) of said Section 27, said point also being the southwest corner of the "Westerly of Audubon Tract" parcel as described in said deed; thence run along the westerly line of said parcel North 37° 00' 38" East for 565.00 feet and North 44° 30' 38" East for 425.46 feet to an intersection with the west line of the Audubon tract as described in deed recorded in Official Record Book 1119 at page 1031, said records; thence run along the west and north lines of said tract, North 00° 48' 58" west for 234.04 feet and South 89° 37' 12"

East for 350.68 feet to the southwest corner of the "Northerly of Audubon Tract" parcel as described in said deed recorded in Official Record Book 1608 at page 24; thence run along the northerly line of said parcel North 64° 30' 53" East for 165.76 feet and South 84° 59' 07" East for 147.61 feet to the east line of the west half (W 1/2) of the northwest quarter (NW 1/4) of said Section 26; thence run North 00° 52' 08" West along said line for 1,313.33 feet to the south line of the north 280 feet of said west half (W 1/2); thence run North 89° 33' 59" West along the south line for 1,294.07 feet to the west line of said fraction; thence run North 00° 45' 48" West along said west line for 280.06 feet to the Point of Beginning.

Also.

The North 280 feet of the West half (W 1/2) of the Northwest Quarter (NW 1/4) of Section 26, Township 44 South, Range 25 East, Lee County, Florida.

Bearings are Plane Coordinate for the Florida West Zone (1979 adjustment).

Together with all oil, gas and mineral rights that may now be owned or hereafter acquired as to the above described property.

SUBJECT TO easements and restrictions of record.

TO HAVE AND TO HOLD the same, together with the tenements, hereditaments and appurtenances, unto the said Mortgagee in fee simple.

AND said Mortgagor does covenant with said Mortgagee that said Mortgagor is indefeasibly seized of said land in fee simple; that the said Mortgagor has full power and lawful right to convey said land in fee simple as aforesaid; that said land is free from all encumbrances; that said Mortgagor will make such further assurances to perfect the fee simple title to said land in said Mortgagee as may reasonably be required; and that said Mortgagor does hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever.

PROVIDED ALWAYS, that if said Mortgagor shall pay unto the said Mortgagee that certain promissory note, of which the following in words and figures is a true copy, to wit:

The undersigned, jointly and severally, promise to pay to the order of JOHN O. ZIPPERER, JR., at Post Office Box 640, Fort Myers, Fl 33902, the sum of EIGHT MILLION NINE HUNDRED THOUSAND AND NO/ 100 DOLLARS, together with interest thereon at the rate of Eleven (11%) per cent per annum, from date; this note shall be payable as follows:

> Interest only shall be paid annually for three (3) years beginning one year from date; thereafter, principal and interest shall be paid in annual payments of $1,511,220.00 each until six annual payments of such amount have been made. The entire balance of principal and interest shall be payable ten (10) years from date.
>
> In the event any scheduled payment of principal and interest is not paid when due the undersigned shall pay a penalty in the amount of

> $5,000.00 per day accruing [sic] until said delinquent payment (plus total accrued penalty assessment) is paid in full. If payment is received on or before 5 days from due date, payee agrees to waive penalty, but if received after 5 days of the due date, penalty shall revert to due date.

As payments are made, they shall first be applied to interest and balance to principal, it being understood that the makers can increase their payments or pay all of the balance due on this indebtedness at any time, and in case of a default in any payment for a period of thirty (30) days, the balance unpaid on this note shall, at the option of the holder, immediately become due and payable, and in case of default the makers shall be liable for all costs of collection, including a reasonable attorney's fee (including fees prior to suit, at trial level, and on all appeals), if this note is placed in the hands of an attorney for collection. The makers and endorsers hereby waive presentment, demand for payment, protest, and notice of protest on this note.

Maker shall have no personal liability upon this note. The sole remedy of the holder shall be to foreclose the purchase money mortgage securing this note; and all holders covenant not to sue upon this note or seek a deficiency judgment.

By: COPY(Seal)
P. Gerald DeSimone,
Trustee

and shall perform, comply with and abide by each and every one of the stipulations, agreements, conditions and covenants of said promissory note and of this deed, then

this deed and the estate hereby created shall cease and be null and void.

AND the said Mortgagor hereby covenants and agrees:

1. To pay all and singular the principal and interest and other sums of money payable by virtue of said promissory note and this deed, or either, promptly on the days respectively the same severally come due.

2. To pay all and singular the taxes, assessments, levies, liabilities, obligations and encumbrances of every nature on said described property each and every, and if the same be not promptly paid the said mortgagee may at any time pay the same without waiving or affecting the option to foreclose or any right hereunder, and every payment so made shall bear interest from the date thereof at the rate of Eleven (11%) per cent, per annum.

3. To pay all and singular the costs, charges and expenses, including lawyer's fees (including fees prior to suit, at trial level, and on all appeals), reasonably incurred or paid at any time by said Mortgagee because of the failure on the part of the said Mortgagor to perform, comply with and abide by each and every the stipulation, agreements, conditions and covenants of said promissory note and this deed, or either, and every such payment shall bear interest from date at the rate of Eleven (11%) per cent, per annum.

4. To permit, commit or suffer no waste, impairment or deterioration of said property or any part thereof.

5. To perform, comply with and abide by each and every the stipulations, agreements, conditions and covenants in said promissory note and in this deed set forth.

6. If any of said sums of money herein referred to be not promptly and fully paid within thirty days next after the same severally become due and payable, or if each and every the stipulations, agreements, conditions and covenants of said promissory note and this deed or either, are not duly performed, complied with and abided by, the said aggregate sum mentioned in said promissory note then remaining unpaid shall become due and payable forthwith or thereafter at the option of the Mortgagee as fully and completely as if the said aggregate sum of EIGHT MILLION NINE HUNDRED THOUSAND AND NO/00 ($8,900,000.00) DOLLARS was originally stipulated to be paid on such day, anything in said promissory note or herein to the contrary notwithstanding.

7. The Mortgagee may, at any time while a suit is pending to foreclose or to reform this mortgage or to enforce any claims arising hereunder, apply to the court having jurisdiction thereof for the appointment of a receiver, and such court shall forthwith appoint a receiver of the premises and all other property covered hereby, including all and singular the income, profits, rents, issues and revenues from whatever source derived, and such receiver shall have all the broad and effective functions and powers in anywise entrusted by a court to a receiver and such appointment shall be made by such court as an admitted equity and a matter of absolute right to said Mortgagee, and without reference to the adequacy or inadequacy of the value of the property mortgaged or to the solvency or insolvency of said Mortgagor or the

defendants, and such income, profits, rents, issues and revenues shall be applied by such receiver according to the lien of this mortgage and the practice of such court.

8. Mortgagee agrees to release portions of subject property from the lien of this mortgage by providing Mortgagor with an executed Partial Release of Lien upon receipt of Mortgagor's written request designating the portion or portions of subject property to be released accompanied with Mortgagor's appropriate release payment to be calculated as follows:

(a) All portions of subject property fronting on existing roads to a depth of 300 feet, shall hereinafter be referred to as "frontage parcels" and shall be released from mortgage lien upon the payment of $100,000.00 per acre.

(b) All portions of subject property other than frontage parcels shall be referred to as "interior parcels" and shall be released from mortgage lien upon the payment of $21,000.00 per acre (130% of original mortgage amount).

It is understood and agreed that Mortgagor's requested release parcels may be in any size and location within subject property with the following express stipulations:

(c) For release purposes, subject property shall be subdivided into two (2) major parcels hereinafter referred to as the "North Parcel" and the "South Parcel", each lying respectively on the North and South sides of the centerline of Florida Power and Light Co. easement recorded in Official Records Book 392, Page 392 and

Official Records Book 384, Page 735, Public Records of Lee County, Florida.

(d) With each one acre of road frontage property released, there shall be (either simultaneously or previously) a corresponding required release of 20 acres of interior property which at Mortgagor's option may either be all in the interior portion of the North parcel or maybe [sic] split with 10 acres being in the interior portion of the South parcel and 10 acres being in the interior portion of the North parcel. Interior portions of the North or South parcels may be independently released without any required corresponding release of frontage property, however, an equal amount of land must always be released from the North parcel simultaneously with the release of lands in the South parcel. All land not released shall always have legal access and shall not be "landlocked".

(e) If in the planning and/or development process, it becomes necessary or desirable (at Mortgagor's discretion) to dedicate or transfer title of portions of Subject Property (with no remuneration to Mortgagor) to any governmental body or agency for land development or property improvement purposes (limited to, road rights-of-way or utility and drainage easements); it is agreed that upon Mortgagor's written request, Mortgagee shall provide Mortgagor with releases of mortgage lien for these rights-of-way and/or easement designated areas at no charge, providing that Mortgagor accompanies its written request with a binding commitment that said easements and/or rights-of-way will be improved with actual streets or utilities within one (1) year or said right-of-way or easements shall revert to owner and be

re-encumbered by this mortgage. Mortgagor warrants that all said reversion agreements entered into by Mortgagor must provide that in the event of reversions of said property to Mortgagee that it shall be free and clear of all encumbrances other than the re-encumbrances of this mortgage lien. Mortgagor's failure to so provide shall constitute a default upon this mortgage.

9. Mortgagor shall have no personal liability upon this mortgage. The sole remedy of the holder shall be to foreclose the purchase money mortgage securing this mortgage; and the holder covenants not to sue for a personal judgment or to seek a deficiency judgment.

IN WITNESS WHEREOF, The said Mortgagor hereunto sets his hand and seal the day and year first above written.

Signed, Sealed and Delivered
in the Presence of:

/s/ Illegible
/s/ Illegible

By: /s/ P. Gerald DeSimone (Seal)
P. GERALD DeSIMONE, Trustee

STATE OF FLORIDA
COUNTY OF LEE

AUG 14 2 illegible PM '86

I, an officer authorized to take acknowledgments of deeds according to the laws of the State of Florida, duly qualified and acting, HEREBY CERTIFY that P. GERALD DeSIMONE, Trustee, to me personally known, this day acknowledged before me that he executed the foregoing mortgage, and I FURTHER CERTIFY that I know the said

person making said acknowledgment to be the individual described in and who executed the said mortgage.

WITNESS my hand and official seal at Fort Myers, County of Lee, and State of Florida, this 14th day of AUGUST, 1986.

My Commission Expires: Aug. Illegible, 1989

/s/ Illegible
Notary Public
(SEAL)

2192101

MORTGAGE MODIFICATION AGREEMENT

THIS MORTGAGE MODIFICATION AGREEMENT made the 18 day of Nov., 1986, by and between P. GERALD DESIMONE, Individually and as Trustee, hereinafter called Mortgagor, and JOHN O. ZIPPERER, JR., hereinafter called Mortgagee,

WHEREAS Mortgagor executed and delivered to Mortgagee that certain Mortgage dated August 14, 1986, and recorded in O.R. Book 1862, page 4282; and

WHEREAS Mortgagor has since acquired certain oil and mineral rights appertaining to the lands described in said Mortgage, and the parties desire to place said oil and mineral rights under the lien of said Mortgage;

NOW THEREFORE, in consideration of the foregoing, the parties mutually agree that the above mentioned Mortgage is modified so that the lien of said Mortgage

shall, in addition to the property described in said Mortgage, shall be upon the oil and mineral rights located in Lee County, Florida and described as follows:

> All oil and mineral rights in and to the property described as follows:
>
> The East 1/2 of Section 27, Township 44 South, Range 25 East; the East 1/2 of the Southwest 1/4 of Section 27, Township 44 South, Range 25 East; and the West 1/2 of the Northwest 1/4 of Section 26, Township 44 South, Range 25 East.

Except as noted herein, all of the terms and conditions of said Mortgage remain the same.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above written.

/s/ Illegible

/s/ Thomas Illegible
witnessed as to
John O. Zipperer, Jr.

/s/ x Illegible

/s/ x Illegible
witness as to
P. Gerald DeSimone

/s/ x P. Gerald DeSimone
P. Gerald DeSimone,
Individually and as
Trustee

/s/ John O. Zipperer, Jr.
John O. Zipperer, Jr.

STATE OF FLORIDA
COUNTY OF LEE

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, P. GERALD DESIMONE, Individually and as Trustee, to me well

known to be the person described in and who executed the foregoing Mortgage Modification Agreement, and he acknowledged before me that he executed the same for the purposes therein expressed.

WITNESS, my hand and official seal at Fort Myers this 18th day of November, 1986.

My Commission Expires:

/s/ Georgette A. Gibboney
Notary Public

(SEAL)

STATE OF FLORIDA
COUNTY OF LEE

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, JOHN O. ZIPPERER, JR., to me well known to be the person described in and who executed the foregoing Mortgage Modification Agreement, and he acknowledged before me that he executed the same for the purposes therein expressed.

WITNESS, my hand and official seal at Fort Myers this 18th day of November, 1986.

My Commission Expires: August 14, 1989

/s/ Illegible
Notary Public

(SEAL)

RETURN TO:

STEWART & KEYES
P. O. DRAWER 790
FORT MYERS, FL 33902

THIS INSTRUMENT PREPARED BY:

STEWART & KEYES
P. O. DRAWER 790
FORT MYERS, FL 33902

PROPERTY APPRAISER'S PARCEL I.D. (FOLIO) NUMBER(S):

2935370

MORTGAGE MODIFICATION AGREEMENT

THIS AGREEMENT made this 26th day of OCTOBER, 1990, by and between:

JOHN O. ZIPPERER, JR., hereinafter called Mortgagee,

and

P. GERALD DeSIMONE, TRUSTEE, hereinafter called Mortgagor.

WHEREAS, Mortgagor executed and delivered to Mortgagee a certain Mortgage recorded in O.R. Book 1862, Page 4282, Public Records of Lee County, Florida; and

WHEREAS, the parties are desirous of amending said mortgage and the note it secures.

NOW THEREFORE, in consideration of the sum of ONE ($1.00) DOLLAR paid by Mortgagor to Mortgagee,

receipt whereof is hereby acknowledged, the parties agree as follows:

1. The principal balance of said mortgage is $8,900,000.00 and the interest is paid to August 14, 1989.

2. The accrued unpaid interest to August 14, 1990 is $979,000.00 Interest on this unpaid interest shall accrue at the rate of twelve (12%) percent per annum until December 1, 1990, at which time all interest that has then accrued shall be due and payable.

Interest on the unpaid principal, or unpaid interest, from time to time after August 14, 1990 shall accrue at the rate of twelve (12%) percent per annum until the entire principal is paid.

STATE OF FLORIDA
COUNTY OF LEE

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, P. GERALD DeSIMONE, Trustee, to me well known to be the person described in and who executed the foregoing Mortgage Modification Agreement, and he acknowledged before me that he executed the same for the purposes therein expressed.

WITNESS, my hand and official seal at FORT MYERS, FLORIDA this 26th day of OCTOBER, 1990.

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPIRES
AUG. 31, 19illegible
illegible

/s/ illegible
Notary Public

[seal]

I Charlie Green, Clerk of the Circuit Court in and for illegible certify that the foregoing is a true and correct illegible illegible as filed in this office 11/8/90 at 4:21 p.m. illegible or book 2185, page 4652-4654 illegible

Witness my hand and official seal this 8th day of May A.D. 1995

CHARLIE GREEN, CLERK

By /s/ illegible

APPENDIX 2

CHAPTER 173

FORECLOSURE OF MUNICIPAL TAX AND SPECIAL ASSESSMENT LIENS

173.01 Foreclosure of municipal tax certificates authorized.

173.02 Proceedings in rem against the lands.

173.03 Conditions determining when suit may be brought; lands and claims included.

173.04 Procedure for bringing foreclosure suit; certificate of attorney as to notice of suit; jurisdiction obtained by publication of notice of suit; form of notice.

173.05 Parties; time for appearance.

173.06 Affidavits and certificates as prima facie evidence; proof of validity or invalidity.

173.07 Tender of correct amount as condition precedent.

173.08 Judgment for complainant; amounts included; attorney's fee.

173.09 Judgment for complainant; special master's sale; complainant may purchase and later sell.

173.10 Judgment for complainant; court may order payment of other taxes or sale subject to taxes; special master's conveyances.

173.11 Distribution of proceeds of sale.

173.12 Lands may be redeemed prior to sale.

173.13 Procedure under this chapter optional.

173.14 Chapter supplemental to other law.

173.15 Parties and subject matter; tax liens of equal dignity.

173.01 Foreclosure of municipal tax certificates authorized. – The lien of any and all taxes, except those ad valorem taxes collectible by the county tax collector, tax certificates, and special assessments imposed by any incorporated city or town in the state upon real estate may be foreclosed by such city or town by suit in chancery. The practice, pleading, and procedure in any such suit shall be in substantial accordance with the practice, pleading, and procedure for the foreclosure of mortgages of real estate, except as herein otherwise provided.

History. – s. 1, ch. 15038, 1931; CGL 1936 Supp. 3004(2); s. 31, ch. 73-332.

173.02 Proceedings in rem against the lands. – Suits for the foreclosure of tax liens and special assessments under this chapter shall be in the nature of proceedings in rem against the lands upon which said taxes or special assessments are a lien or liens, and it shall not be material that the ownership of said lands be correctly alleged in said proceedings or that parties having an interest or interests in or liens or claims upon said lands be made parties to such proceedings by name or description or be served with process therein, except as hereinafter provided. In any such suits as many lots, parcels or tracts of land, regardless of ownership, and as many tax liens, tax certificates and assessment liens may be included in one suit as the complainant may desire. Any judgment or decree that may be rendered in any such suit shall be enforceable only against such lands.

History. – s. 2, ch. 15038, 1931; CGL 1936 Supp. 3004(3).

173.03 Conditions determining when suit may be brought; lands and claims included. –

(1) Suit may be brought at any time after any one or more of the following events, respectively:

(a) After the expiration of 2 years from the date of any tax certificate issued and held by a city or town whose charter provides for or requires the issuing of tax certificates for delinquent taxes;

(b) After the expiration of 2 years from the date any tax becomes delinquent which was imposed by a city or town whose charter does not provide for or require the issuing of tax certificates; or

(c) After the expiration of 1 year from the date any special assessment or installment thereof becomes due and payable.

(2) There may be included in any suit all or any part of the lands upon which tax certificates have been outstanding or taxes have remained delinquent or any special assessment or installment thereof shall have been in default for the respective periods aforesaid, and there may be included therein all claims and demands of said city or town against said lands or any part thereof for taxes, tax certificates and special assessments or installments thereof which may be due and payable to such city or town at the time of the institution of such suit.

History. – s. 3, ch. 15038, 1931; CGL 1936 Supp. 3004(4).

173.04 Procedure for bringing foreclosure suit; certificate of attorney as to notice of suit; jurisdiction obtained by publication of notice of suit; form of notice.

(1) Any suit hereby authorized shall be commenced by bill in chancery in the circuit court of the county in which such city or town is situated, in the name of the city or town whose taxes, tax certificates and special assessments are sought to be enforced, as complainant, and against any or all lands upon which any taxes, tax certificates and special assessments are delinquent (as the case may be) for the period aforesaid, as defendant, in which bill there shall be briefly described the levy and nonpayment of taxes and special assessments which are delinquent for the period aforesaid, and of all other taxes and special assessments then due and payable to said city or town and sought to be recovered in such bill, the lands proceeded against and the amount chargeable to each parcel or tract. It shall be unnecessary to name in such bill or proceedings any person owning or having any interest in or lien upon such lands as defendants. At least 30 days prior to the filing of any such bill in chancery, written notice of intention to file the same shall be sent by registered mail to the last known address of the holder of the record title and to the holder of record of each mortgage or other lien, except judgment liens, upon each tract of land to be included in said bill in chancery; such notice shall briefly describe the particular lot or parcel of land, shall state the amount of tax certificate and special assessment liens sought to be enforced and shall warn said owner and holders of liens, mortgages or other liens

that on or after the day therein named said bill in chancery to enforce the same will be filed, unless paid on or before said date.

(2) A certificate of the attorney shall be attached to the bill of complaint to the effect that said written notice has been given, and such certificate shall be prima facie evidence that the provisions of this section have been complied with. The complainant's counsel shall make diligent inquiry as to the address of the record title and holders of record liens other than judgments and the clerk of the circuit court shall mail by registered mail a copy of the notice hereinafter provided for, to such record owner and holders of record liens other than judgments at such last known address.

(3) Jurisdiction of any of said lands and of all parties interested therein or having any lien thereon shall be obtained by publication of a notice to be issued as of course by the clerk of the circuit court in which such bill is filed on the request of complainant, once each week for not less than 2 consecutive weeks, directed to all persons and corporations interested in or having any lien or claim upon any of the lands described in said notice and said bill. Such notice shall describe the lands involved and the respective principal amounts sought to be recovered in such suit for taxes, tax certificates and special assessments on such respective parcels of land, and requiring all such parties to appear and defend said suit on or before the day specified in said notice, which shall be not less than 4 weeks after the date of the first publication of such notice. Said notice may be in substantially the following form, with blanks appropriately filled in:

(Name City or Town)
Complainant,

vs.

Certain lands upon which (here insert the word "taxes," or the words "special assessments" or both, as the case may be) are delinquent,

Defendant.

IN THE CIRCUIT COURT FOR ___ COUNTY, FLORIDA

IN CHANCERY.

NOTICE

To all persons and corporations interested in or having any lien or claim upon any of the lands described herein:

You are hereby notified that (name city or town) has filed its bill of complaint in the above named court to foreclose delinquent ___ (here insert the words "tax liens, tax certificates or special assessments," as the case may be) with interest and penalties, upon the parcels of land set forth in the following schedule, the aggregate amount of such ___ (here insert the words "tax liens, tax certificates or special assessments," as the case may be) interest and penalties, against said respective parcels of land, as set forth in said bill of complaint, being set opposite such parcels in the following schedule, to wit:

DESCRIPTION OF LANDS

Amount of ___ (here insert the word "taxes," or the words "special assessments" or both, as the case may be).

In addition to the amounts set opposite each parcel of land in the foregoing schedule, interest and penalties, as

provided by law, on such delinquent taxes and special assessments, together with a proportionate part of the costs and expenses of this suit, are sought to be enforced and foreclosed in this suit.

You are hereby notified to appear and make your defenses to said bill of complaint on or before the ___ day of ___, and if you fail to do so on or before said date the bill will be taken as confessed by you and you will be barred from thereafter contesting said suit, and said respective parcels of land will be sold by decree of said court for nonpayment of said taxes and assessment liens and interest and penalties thereon and the costs of this suit.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said court, this ___ day of ___.

(Clerk of said court.)

By Deputy clerk.)

(4) Proof of publication of said notice, as herein required, shall be by affidavit of the publisher or some agent or employee thereof filed in said cause.

History. – s. 4, ch. 15038, 1931; CGL 1936 Supp. 3004(5); s. 32, ch. 71-355; s. 18, ch. 90-279.

173.05 Parties; time for appearance. – Every person interested in or having any lien upon any parcel of land described in the bill of complaint shall be deemed a party to said cause and may appear and defend said cause within the time specified in such notice. Any person not appearing and defending within such time shall be

deemed to have confessed said bill, but the court may in its discretion and for cause shown enlarge the time within which any such person may appear and defend said cause.

History. – s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.06 Affidavits and certificates as prima facie evidence; proof of validity or invalidity. –

(1) An affidavit or affidavits of the tax collector or other officer of complainant having the duty of issuing or collecting such taxes, special assessments or tax certificates, as to the existence of delinquent taxes, tax certificates and special assessments upon any parcel of land and the time when the same became due, the amount due thereon, including interest and penalties, and the non-payment thereof, shall be received in evidence as prima facie proof of the facts so certified and of the validity of all proceedings in and about the levying and assessment of such taxes and special assessments and the issuing of such tax certificate or certificates.

(2) Tax certificates shall be admissible in evidence and shall be prima facie valid.

(3) No tax certificate shall be held invalid except upon proof that the property was not subject to taxation or that the taxes had been paid previous to any tax sale or prior to the institution of the suit.

History. – s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.07 Tender of correct amount as condition precedent. – If any person shall claim that any tax, tax certificate or assessment is improper or illegal, and seek to contest the same, then such person at the time of filing an answer resisting the foreclosure of any tax lien, tax certificate or assessment lien shall tender into the registry of the court such amount as he claims was properly assessable or for which the property of such person was properly assessable.

History. – s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.08 Judgment for complainant; amounts included; attorney's fee. –

(1) In all cases where the cause may be decided for complainant, the judgment for delinquent taxes, tax certificates and special assessments against any parcel of land shall include the principal of, and interest and penalties on such taxes, tax certificates and special assessments, the costs of the suit and a reasonable attorney's fee; such costs and attorney's fee to be apportioned among and charged against the various parcels of land involved in proportion to the amount of taxes, tax certificates and special assessments adjudged against such respective parcels of land.

(2) In fixing the fees of complainant's attorney the court shall take into consideration the use which the complainant has made of the privilege hereby given of including in one suit divers taxes, tax certificates and assessment liens, and if the court be of the opinion that there has been an unnecessary separation of causes of

action on the same or different parcels of land which might have been joined in the same action, it shall not allow an attorney's fee greater than would have been allowed if the action had been combined.

History. – s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.09 Judgment for complainant; special master's sale; complainant may purchase and later sell. –

(1) Any such decree shall direct the special master thereby appointed to sell the several parcels of land separately to the highest and best bidder for cash (or, at the option of complainant, to the extent of special assessments included in such judgment, for bonds or interest coupons issued by complainant), at public outcry at the courthouse door of the county in which such suit is pending, or at such point or place in the complainant municipality as the court in such final decree may direct, after having advertised such sale (which advertisement may include all lands so ordered sold) once each week for 2 consecutive weeks in some newspaper published in the city or town in which is the complainant or if no such newspaper, in a newspaper published in the county in which the suit is pending, and if all the lands so advertised for sale be not sold on the day specified in such advertisement, such sale shall be continued from day to day until the sale of all such land is completed.

(2) Such sales shall be subject to confirmation by the court, and said special master shall, upon confirmation of the sale or sales, deliver to the purchaser or purchasers at said sale a deed of conveyance of the property so sold;

provided, however, that in any case where any lands are offered for sale by the special master and the sum of the tax, tax certificates and special assessments, interest, penalty, costs and attorney's fee is not bid for the same, the complainant may bid the whole amount due and the special master shall thereupon convey such parcel or parcels of land to the complainant.

(3) The property so bid in by complainant shall become its property in fee simple and may be disposed of by it in the manner provided by law, except that in the sale or disposition of any such lands the city or town may, in its discretion, accept in payment or part payment therefor any bonds or interest coupons constituting liabilities of said city or town.

History. – s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.10 Judgment for complainant; court may order payment of other taxes or sale subject to taxes; special master's conveyances. –

(1) In the judgment or decree the court may, in its discretion, direct the payment of all unpaid state and county taxes and also all unpaid city or town taxes and special assessments or installments thereof, imposed or falling due since the institution of the suit, with the penalties and costs, out of the proceeds of such foreclosure sale, or it may order and direct such sale or sales to be made subject to such state and county and city or town taxes and special assessments.

(2) Any and all conveyances by the special master shall vest in the purchaser the fee simple title to the property so sold, subject only to such liens for state and county taxes or taxing districts whose liens are of equal dignity, and liens for municipal taxes and special assessments, or installments thereof, as are not directed by the decree of sale to be paid out of the proceeds of said sale.

History. – s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.11 Distribution of proceeds of sale. – The proceeds of any foreclosure sale authorized by this chapter shall be distributed by the special master conducting the sale according to the final decree and if any surplus remains after the payment of the full amount of the decree, costs and attorney's fees and any subsequent tax liens which may be directed by such decree to be paid from the proceeds of sale, such surplus shall be deposited with the clerk of the court and disbursed under order of the court.

History. – s. 6, ch. 15038, 1931; CGL 1936 Supp. 3004(7).

173.12 Lands may be redeemed prior to sale. – Any person interested in any lands included in the suit may redeem such lands at any time prior to the sale thereof by the special master by paying into the registry of the court the amount due for delinquent taxes, interest and penalties thereon and such proportionate part of the expense, attorney's fees and costs of suit as may have been fixed by the court in its decree of sale, or by written stipulation

of complainant, and thereupon such lands shall be dismissed from the cause.

History. – s. 7, ch. 15038, 1931; CGL 1936 Supp. 3004(8).

173.13 Procedure under this chapter optional. – The exercise of the power and provisions conferred in this chapter shall be optional with the municipalities and shall not be mandatory upon any municipality of the state. Any municipality desiring to proceed hereunder may elect to proceed hereunder by formal action of its governing authority and by proceeding as described herein.

History. – s. 8, ch. 15038, 1931; CGL 1936 Supp. 3004(9).

173.14 Chapter supplemental to other law. – This chapter shall not repeal any other statute relating to the subject matter hereof, but shall be deemed to provide a supplemental, additional and alternative method of enforcement of tax liens and special assessments for the benefit of all incorporated cities or towns of the state of Florida, whether organized under special act or general laws, and shall be liberally construed to effectuate its purpose.

History. – s. 9, ch. 15038, 1931; CGL 1936 Supp. 3004(10).

173.15 Parties and subject matter; tax liens of equal dignity. –

(1) In the foreclosure of municipal tax and special assessment liens by suit in the nature of proceedings in rem, as provided by this chapter, for the purpose of adjudicating therein all tax liens against the lands being proceeded against, or any portion thereof, and receiving from the proceeds of any foreclosure sale in such proceedings a proper and proportionate share of such proceeds in satisfaction of tax liens so adjudicated, the owner, holder, or assignee of any tax lien, however evidenced of equal or inferior dignity with those of the complainant on or against the lands being proceeded against, or any portion thereof, may be included as and made a party defendant in such proceeding by the service of process on such party defendant in the manner provided by law for service of process on defendants in chancery.

(2) This section is intended to broaden the scope of the foreclosure proceedings authorized by this chapter, so as to permit the adjudication of tax liens of equal dignity in said proceedings, and shall be liberally construed to effectuate such purpose.

History. – ss. 1, 2, ch. 22021, 1943.

APPENDIX 3

FEDERAL DEPOSIT INSURANCE CORPORATION, as Managing Agent for FSLIC Resolution Fund, as Receiver for Alliance Federal Savings and Loan Association, Plaintiff-Appellant,

v.

CITY OF NEW IBERIA and Sewerage District No. 1 of the City of New Iberia, Louisiana, Defendants-Appellees.

No. 89-4658.

United States Court of Appeals,
Fifth Circuit.

Jan. 23, 1991.

Federal Savings and Loan Insurance Corporation (FSLIC) brought action against city and sewerage district to challenge imposition of special assessments and liens which "primed" outstanding mortgage. The United States District Court for the Western District of Louisiana granted summary judgment for defendants. Appeal was taken. The Court of Appeals, 847 F.2d 838, reversed and remanded. Federal Deposit Insurance Corporation (FDIC) was substituted as plaintiff. On remand the District Court, F.A. Little, Jr., J., entered judgment in favor of city and district. FDIC appealed. The Court of Appeals, Edith H. Jones, Circuit Judge, held that special assessments and liens for paving and sewage system were not "taking" of mortgage interest, and, thus, FDIC had no due process right to notice.

Affirmed.

Stephen L. Williamson, Montgomery, Barnett, Brown, Read, Hammond & Mintz, New Orleans, La., G. Tim Alexander, III, Mouton & Alexander, Lafayette, La., for plaintiff-appellant.

Minos H. Armentor, Armentor & Wattigny, New Iberia, La., for defendants-appellees.

R. Gordon Kean, Jr., Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman, Baton Rouge, La., for amicus La. Mun. Assoc.

Appeal from the United States District Court for the Western District of Louisiana.

Before POLITZ, JONES, and BARKSDALE, Circuit Judges.

EDITH H. JONES, Circuit Judge:

Clad in the garb of a crusader for equitable tax practices, a federal government agency, the FDIC,[1] objects to the City of New Iberia, Louisiana's tax liens covering special assessments for a paved street and sewage system built on a developer's property. FDIC contends that the assessments and liens were imposed in violation of the due process clause because under Louisiana law the recordation of the liens, which "prime" that of FDIC, represent a "taking" of FDIC's mortgage interest without prior notice, hence without due process of law. We cannot agree with FDIC's initial premise that the levying of a

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[1] After passage of the FIRREA by Congress, FDIC substituted for FSLIC as plaintiff. References to FDIC here thus also identify its predecessors, FSLIC and Alliance Federal Savings & Loan, the institution taken over by FSLIC.

special assessment and lien for these public improvements, to support their construction with public funds, constitutes a "taking" in this case. Consequently, we affirm the district court's judgment.

I.

FDIC sparked this controversy as receiver of Alliance Federal Savings & Loan Association, the entity which loaned $3 million to the developers so that they could purchase property including Iberia Southport Subdivision part III. The relevant facts were stated by the district court as follows:

"On September 23, 1983, Alliance loaned $3 million to George Oubre and John Levy. The loan was secured by [two mortgages] in favor of Alliance on land identified as the Iberia Southport Subdivision. Iberia Southport Subdivision, in turn, consisted of parts I, II and III, of which parts I and II had been formally subdivided at the time of the loan.

"Parts I and II consist of single and multi-family dwellings, as well as a number of vacant lots zoned for either residential or commercial use. Street and sewerage improvements were constructed in parts I and II by the city pursuant to action by the New Iberia Board of Trustees in 1976 and 1979. In conjunction with those improvements, the city imposed special assessments to be paid in ten annual installments and guaranteed by liens on parts I and II. Upon default of the installments due June 1, 1984, the city brought foreclosure actions which eventually resulted in the developer-owned lots in parts I and II being sold at a sheriff's sale in 1986. Alliance, as

mortgagee, was named as a defendant in the foreclosure proceedings, and eventually purchased a number of the available lots at the sheriff's sale. The city purchased most of the remaining lots. Since the sheriff's sale, however, the city has resold just one lot.

"Parts I and II of Iberia Southport were accessible only from the north. In order to ease the traffic congestion at the north end of the subdivision, Oubre and Levy petitioned the city to construct a new street, Romero Drive, through the as yet undeveloped part III of the subdivision. Romero Drive was positioned to connect the south end of Southport Boulevard, the main north-south artery within the subdivision, with Jefferson Terrace outside the subdivision. Construction of Romero Drive also would be a major first step toward the eventual future development of part III. Oubre and Levy, as owners of the property on both the north and south sides of the proposed Romero Drive, filed their petition with the city, in accordance with La.Rev. Stat. § 33:3331, on November 18, 1983. Oubre and Levy, their spouses, James Romero, and Marie Land Surveying Co., collectively purporting to constitute the owners of 100% of all land fronting both Southport Boulevard and Romero Drive, executed the petition for street and sewer improvements on May 9, 1984.

"On June 19, 1984, the Board of Trustees passed a resolution which expressed the city's intent to proceed with the requested improvements, and which directed the public hearings regarding the improvements be advertised and conducted. According to the text of the resolutions, as well as the testimony of various city officials, public hearings are routinely held in order to allow the

mayor and Board of Trustees to determine the existence and extent of any opposition to the proposed improvements. In addition, the resolution stipulated that '[t]he question of the benefit to each lot or parcel of real estate to be assessed as a result of the construction of said improvements shall also be considered at said public hearing.' The hearings for the proposed construction of Romero Drive and related sewerage improvements were advertised in the *Daily Iberian*. No direct notice of the hearings was given to Alliance, as mortgagee of the subject property. When the public hearings were conducted on July 17, 1984, the city received no objection to the proposed projects. No evidence was presented at trial to indicate that any testimony at the hearing concerned the cost-benefit issue.

"On August 21, 1984, the Board of Trustees passed a pair of resolutions approving the street and sewer construction, directing the city's consulting engineers to prepare plans and specifications for the projects, and directing that the total cost be charged to the lots abutting the proposed improvements. The resolutions also recited a finding by the Board of Trustees that 'each lot or parcel of real estate be assessed . . . , as a result of the construction of [the paving and sewerage] improvements, will be benefited to an amount not less than the amount of the estimated assessment to be levied against each such lot or parcel of real estate.' On January 24, 1985, the engineering report, including the estimated cost of the projects, was filed with the city. On February 19, 1985, the Board of Trustees passed a pair of resolutions which (1) accepted the engineering report; (2) recited a finding that the benefit inuring to each parcel of real estate abutting the

proposed improvements will equal or exceed the amount of the special assessment to be imposed against each such parcel; and (3) directed that each abutting property owner be notified of the improvements, and of the amount and time and manner of repayment of the special assessment. The city executed a contract for construction of the improvements on March 12, 1985. Finally, on April 16, 1985, the city adopted ordinances 327 and 328, which imposed special assessments of $52.60 and $16.10, respectively, per front foot on each parcel of real estate abutting on Romero Drive and the portion of Southport Boulevard improved by the street paving and sewerage project. The ordinances also directed that a lien be imposed against each specially assessed parcel of real estate, which lien primed all other liens and mortgages except prior taxes or recorded assessments. The total amount of the special assessments was $217,194.36. At no time was either Alliance or FSLIC, as mortgagee, notified of any of these actions or improvements concerning the property.

"The construction was completed in March of 1986. On April 16, 1986, Oubre and Levy defaulted on the first installment payment on the special assessments. The city consequently initiated foreclosure proceedings in the 16th Judicial District Court, Iberia Parish, Louisiana. Those proceedings eventually resulted in a sheriff's ale of the subject land, of which the FSLIC had no advance notice, and at which the city purchased all the land up for sale.

"Following the commencement of the state foreclosure proceeding, FSLIC brought this action challenging the imposition, without notice to FSLIC or Alliance, as mortgagee, of the special assessment and the lien which primed the outstanding mortgage. FSLIC seeks a

declaration that the special assessment and lien, and the manner in which they were imposed, impaired the value of FSLIC's property interest without due process, in violation of the Fourteenth Amendment to the U.S. Constitution. Ultimately, FSLIC desires that the lien and special assessment be either invalidated or subordinated in priority to Alliance's prior recorded mortgages now held by FSLIC."

II.

Although the district court satisfied itself as to jurisdiction and the parties have not since raised the issue, it is worthwhile to explain why this case is not barred by the Tax Anti-injunction Statute, 28 U.S.C. § 1341. Section 1341 deprives federal courts of jurisdiction to enjoin, suspend or restrain the assessment, levy or collection of any tax under state law except where no plain, speedy and efficient remedy is available in state courts. While the goal of the statute is to reinforce federalism and comity with the states in matters of local taxation, that goal is not subserved when the local authorities have attempted to tax an instrumentality of the federal government. Consequently, the Supreme Court has concluded,

> in accord with an unbroken line of authority and convincing evidence of legislative purpose that § 1341 does not act as a restriction upon suits by the United States to protect itself and its instrumentalities from unconstitutional state exaction. (citing five cases)

Department of Employment v. United States, 385 U.S. 355, 358, 87 S.Ct. 464, 466, 17 L.Ed.2d 414 (1966). Applying this principle in the course of a decision that Massachusetts

could not tax materials used in the construction of a new Federal Reserve Bank building, the First Circuit accepted

> . . . the absence of any bright line to facilitate the analysis [of jurisdiction]; each instrumentality must be examined in light of its governmental role and the wishes of Congress in relevant legislation.

Federal Reserve Bank of Boston v. Commissioner of Corporations & Taxation, 499 F.2d 60, 64 (1st Cir.1974). That FSLIC and FDIC are federal agencies exempt from the operation of § 1341 may hardly be doubted. Federal court jurisdiction over their cases has been broadly authorized. *See, e.g.*, 12 U.S.C. § 1730(k)(1), 28 U.S.C. § 1341 on this basis the federal courts may assert jurisdiction over this case.

III.

An earlier, unpublished appearance of this case in our court has affected the current presentation of its issues. *See FSLIC v. City of New Iberia*, 847 F.2d 838 (5th Cir.1988). New Iberia originally moved for a summary judgment on the basis that its procedures in assessing the improvements liens afforded due process to FDIC. Ignoring this point, the district court chose instead to predicate a summary judgment on the FDIC's inability to demonstrate that the benefits conferred on the real estate by the public improvements were less than the tax assessments levied to pay for them. On appeal, this court reversed simply because, as FDIC protested, the agency had been caught unaware by the district courts *sua sponte* rationale. This court observed some skepticism, however, as to

whether such a cost-benefit calculus may lead to an unconstitutional taking of property.

Not heeding the Fifth Circuit's warning, the parties framed the debate on remand as a battle of experts over the precise measurement of the improvements' costs and benefits. The district court decided the case in these terms, and the parties' appellate dispute centers on whether a "taking" should be measured based on the comparison between the assessment for the improvements (about $217,000) and the property's appraised value either at the date they were first authorized by the city (August 21, 1984) or the date the special assessments and liens were imposed (April 16, 1985).[2]

FDIC's entire argument may thus be easily summarized. The district court acknowledged that New Iberia gave no notice to FDIC or its predecessors before it approved the improvements and the special assessments and liens to reimburse the city. The Fourteenth Amendment is violated by a taking without notice of FDIC's mortgage interest if a "taking" actually occurred. Whether a taking occurred depends on whether the improvements increased the value of the property in an amount equal to or greater than their costs. Finally, the date upon which a taking must be measured is the date on which state action " 'immediately and drastically diminish[ed] the value of [FDIC's] interest.' " *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 798, 103 S.Ct. 2706,

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[2] As amicus curiae, the Louisiana Municipal Association does contend that the levying of a special assessment for local improvements does not, absent special circumstances, violate the Fourteenth Amendment.

2711, 77 L.Ed.2d 180 (1983) (citing *Mullane v. Central Hanover B. & T. Co.*, 339 U.S. 306, 313-14, 70 S.Ct. 652, 656-57, 94 L.Ed. 865 (1950)). FDIC contends that such date is the date of recordation of the city's liens.

The *Mennonite* decision, on which FDIC relies, is grounded on the recognition that "a mortgagee possesses a substantial property interest that is significantly affected by a tax sale [under Indiana law]. . . . The tax sale immediately and drastically diminishes the value of this security interest by granting the tax-sale purchaser a lien with priority over that of all other creditors." 462 U.S. at 798, 103 S.Ct. at 2711. The Court accordingly held that a state may not conduct a tax sale of property without mailing notice to any interest holder, such as a mortgagee, who is reasonably identifiable on the public records. *Id.* Notice to the property owner alone is not equivalent to notice to the mortgagee. *Id.*

Although *Mennonite* espoused a far-reaching requirement of notice to property owners adversely affected by state actions,[3] the case did not analyze, beyond its straightforward facts, what constitutes a "deprivation" of property. It is hardly arguable that under Indiana's law, the interest of a mortgagee is "drastically diminished" by a tax sale that yields a lien with priority over all recorded interests. *Mennonite* in no way suggested, however, that the taxing authority's decision to levy taxes, which

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[3] See the detailed discussion of *Mennonite* and later Supreme Court cases in *Davis Oil Co. v. Mills*, 873 F.2d 774 (5th Cir.1989). *See also* Rubin & Carter, Notice of Seizure in Mortgage Foreclosures and Tax Sale Proceedings: The Ramifications of *Mennonite*, 48 La.L.Rev. 535, 541-44 (1988).

resulted in the unpaid assessment on the underlying property, similarly affected the mortgagee or demanded adequate notice to the mortgagee. Yet FDIC's position in this court, because it rests on the issue whether New Iberia's special assessment was matched by the value of improvements conferred on the subdivision, inextricably entwines the legislative decision to tax with the procedural question of notice. This troubling connection, not envisioned by *Mennonite*, proves to be the Achilles' heel of FDIC's argument.

We cannot agree that FDIC's mortgage interest was "taken" by New Iberia. Perhaps the skeptical caution in our earlier opinion was too subtle. It seems clear that the parties' emphasis on precise measurement of the costs and benefits of the municipal improvements misplaces, as least in this context, the focus of constitutional takings analysis.[4]

The course of Supreme Court decisions on this subject is not entirely smooth,[5] but the majority of its more

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[4] *Compare Agens v. Tiburon*, 447 U.S. 255, 260, 100 S.Ct. 2138, 2141, 65 L.Ed.2d 106 (1980) ("The application of a general zoning ordinance to particular property effects a taking if the ordinance does not substantially advance legitimate state interests . . . or denies an owner economically viable use of his land. . . . " [citations omitted]).

[5] In *Norwood v. Baker*, 172 U.S. 269, 19 S.Ct. 187, 43 L.Ed. 443 (1898), and later in *Myles Salt Co. v. Board of Commissioners*, 239 U.S. 478, 36 S.Ct. 204, 60 L.Ed. 392 (1916), the Court seemed to suggest that a special tax burden that was imposed in substantial excess over the landowner's benefit might be struck down. *Norwood*, at least, seems to have been limited by the *French* series of cases, *infra*.

recent decisions have hesitated to place federal courts in the business of reviewing local tax decisions by comparing the cost of special assessments with the value of improvements. Justice Holmes's analysis effectively refutes FDIC's cost-benefit theory of judicial review:

> There is a look of logic when it is said that special assessments are founded on special benefits, and that a law which makes it possible to assess beyond the amount of the special benefit attempts to rise above its source. But that mode of argument assumes an exactness in the premises which does not exist. The foundation of this familiar form of taxation is a question of theory. The amount of benefit which an improvement will confer upon particular land – indeed, whether it is a benefit at all – is a matter of forecast and estimate. In its general aspects, at least, it is peculiarly a thing to be decided by those who make the law. The result of the supposed constitutional principle is simply to shift the burden to a somewhat large taxing district, – the municipality, – and to disguise, rather than to answer, the theoretic doubt. It is dangerous to tie down legislatures too closely by judicial constructions not necessarily arising from the words of the Constitution. Particularly, as was intimated in *Spencer v. Merchant*, 125 U.S. 345, 31 L.Ed. 763, 8 Sup.Ct.Rep. 921, it is important for this court to avoid extracting from the very general language of the Fourteenth Amendment a system of delusive exactness in order to destroy methods of taxation which were well known when that amendment was adopted, and which it is safe to say that no one then supposed would be disturbed.

Louisville and N.R. Co. v. Barber Asphalt Paving Co., 197 U.S. 430, 25 S.Ct. 466, 49 L.Ed. 819 (1905). In a series of cases decided just a few years earlier, the Court emphasized that local tax assessments would not contravene the Fourteenth Amendment unless they amounted to such an abuse as to be an outright confiscation of property. *French v. Barber Asphalt Paving Co.*, 181 U.S. 324, 21 S.Ct. 625, 45 L.Ed. 879 (1901); *Wight v. Davidson*, 181 U.S. 371, 21 S.Ct. 616, 45 L.Ed. 900 (1901); *Town of Tonawanda v. Lyon*, 181 U.S. 389, 21 S.Ct. 609, 45 L.Ed. 908 (1901); *Webster v. City of Fargo*, 181 U.S. 394, 21 S.Ct. 623, 45 L.Ed. 912 (1901); *Cass Farm Company v. City of Detroit*, 181 U.S. 396, 21 S.Ct. 644, 45 L.Ed. 914 (1901); *City of Detroit v. Parker*, 181 U.S. 399, 21 S.Ct. 624, 45 L.Ed. 917 (1901).

FDIC has never contended that New Iberia's special assessment was confiscatory. *See Tonawanda*, 181 U.S. at 391, 21 S.Ct. at 610. Indeed, its expert witness simply contended that the sewage and paving improvements constructed at Southport Subdivision part III failed to increase the real estate value proportionately to their cost and were ill-advised in a declining local real estate market. *French* and *Barber* do not support a constitutional challenge to the assessments on this basis.

But more important, to engage in this second-guessing as if New Iberia forced the improvements upon the subdivision and FDIC is specious. Unlike the above-cited special assessment cases that made their way to the Supreme Court, this one started with the landowners' request to New Iberia for aid in improving their property. "When, in such cases, government merely assists landowners in obtaining money on favorable terms [because of its lower costs to make public improvements], it does

not thereby become responsible for ensuring that the investment yields its expected benefits. . . . " *Furey v. City of Sacramento*, 780 F.2d 1448, 1455 (9th Cir.1986). If, as in *Furey*, the owner-developers of Southport Subdivision III were contesting the assessment after they petitioned for the paving and sewage improvements, no constitutional taking would be recognized. That the result should differ in this scenario because a mortgagee makes the claim is unthinkable. The mortgagee's interest in the property is derivative from that of the owner. To allow the mortgagee to assert an unconstitutional taking because of a special assessment sought by the landowner would allow the mortgagee potentially to receive whatever benefit did result from the improvements without having to pay for them. Moreover, this claim by the mortgagee would place an impossible, if not absurd, burden upon the taxing authority: to police the landowner's requests for assistance with improvements so that his mortgagee will not be discomfited by the ensuing special assessments. FDIC's implicit plea for governmental paternalism in an area normally controlled by sophisticated contractual relationships is as strange as it is unsupported by precedent.

On any one of several grounds, then, we reject the claim that New Iberia deprived FDIC's predecessor of its property when it imposed a special assessment to pay for the public improvements on Southport Part III. First, the Fourteenth Amendment comprehends a challenge to a special tax assessment only if it is so palpably punitive or arbitrary as to confer no benefit on the landowner, or "force[s] a landowner to make an improvement that, while valuable to others, is useless to him." *Furey*, 780

F.2d at 1454. Second, if a landowner requests the improvements for which a special assessment is levied by a taxing authority, neither he nor those whose interests derive from him may challenge the legislature's ascription of benefit to the landowner. See *Furey v. City of Sacramento*, 780 F.2d at 1445. Finally, a mortgagee may not insist that the taxing authority protect it from an imprudent special assessment levied because of the mortgagor's request.

Because FDIC was not deprived of its property by the assessment of a special improvements lien at the request of its mortgagee, no issue of constitutionally adequate notice arises.

IV.

For these reasons, the judgment of the district court granting summary judgment to the City of New Iberia is *AFFIRMED*.

APPENDIX 4

RESOLUTION NO. 88-5

A RESOLUTION ADOPTING THE ASSESSMENT ROLL FOR IMPROVEMENT DISTRICT NUMBER 10, NORTHEAST COLONIAL SEWER AND WATER FACILITIES ALONG WINKLER AVENUE EXTENSION FROM METRO PARKWAY EAST TO INTERSTATE 75, PREPARED BY THE CONSULTING ENGINEERS; FIXING THE TIME AND PLACE FOR A HEARING ON THE ASSESSMENT ROLL; PROVIDING FOR MAILING AND PUBLISHING NOTICE OF SAID HEARING, WHERE THE CITY COUNCIL SHALL CONSIDER COMPLAINTS, EQUALIZE SPECIAL ASSESSMENTS AND APPROVE AND CONFIRM SAME.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, that:

SECTION 1. The assessment roll heretofore prepared by the City's consulting engineers and presently on file in the office of the City Clerk be and the same is hereby approved; and it is hereby ascertained and determined that the assessments as set forth in such assessment roll are upon the property to be specially benefited by the proposed public improvements, in proportion to the benefits to be derived therefrom. Such special benefits are determined and prorated on a square foot basis against the respective property to be benefited by the proposed public improvements.

SECTION 2. The 7th day of March, 1988, at 7:30 P.M. at the City Hall in Fort Myers, Florida, is hereby fixed as the time and place at which the owners of the

property to be assessed, or other persons interested therein, may appear before the City Council and be heard as to the propriety and advisability of making certain public improvements, as to the manner of payment therefore, and as to the amount thereof to be assessed against each square foot of property as improved.

SECTION 3. Notice of the above time and place of meeting shall be given to the property owners and shall be substantially the following form:

NOTICE

Notice is hereby given that the City Council of the City of Fort Myers, Florida, will meet on **March 7, 1988 at 7:30 o'clock p.m.,** in the City Hall of Fort Myers, Florida, for the purpose of hearing objections, if any, of all interested persons to the confirmation of Resolution No. 86-48 passed and adopted by the City Council of the City of Fort Myers, Florida, on September 22, 1986; determining to make certain local improvements of water and sewer lines and other appurtenant facilities in Improvement District Number Ten, Northeast Colonial Sewer and Water facilities along Winkler Avenue Extension from Metro Parkway east to Interstate 75, to be financed through special assessments and specifying the lots and parcels of land to be specially assessed therefor. Such interested persons will be heard by the City Council of the City of Fort Myers, Florida, as to propriety and advisability of making said improvements, as to the cost

hereof, as to the manner of payment therefore and as to the amount thereof to be assessed against each square foot of property so improved. The area to be improved is hereby described as follows:

A tract or parcel of land lying in Sections 22, 26, 27, 28, 29, 31, 32, 33 and 34, Township 44 South, Range 25 East and in Section 4, Township 45 South, Range 25 East, in the City of Fort Myers, Florida and/or in Lee County, Florida, which tract or parcel is described as follows:

Beginning at the intersection of the north line of Colonial Boulevard (State Road No. 884) and the west line of the east 425 feet of the Southwest Quarter (SW 1/4) of said Section 31 run northerly along said west line to the north line of said fraction; thence run easterly along said north line to the northwest corner of lands described in Official Record Book 300, Page 206, Lee County Records; thence run southerly to the southwest corner of said lands; thence run easterly to the southeast corner of said lands; thence run northerly to said north line of said fraction, thence run easterly along said north line to the west line of the east 2,301.86 feet of said Section 31; thence run northerly along said west line to the north line of said section; thence run easterly along said north line to the northeast corner of said section; thence run southerly along the line common to said Sections 31 and 32 to the northwest corner of the South Half (S1/2) of the Northwest Quarter (NW1/4) of said Section 32; thence run easterly along the north line of said fraction and the north line of Suburban Estates (Plat Book 8, Page 24, Lee County Records) to the northeast corner of said fraction; thence run

northerly along the west line of the South Half (S1/2) of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of said Section 32 and the west line of said Suburban Estates to the northwest corner of said fraction; thence run easterly along the north line of said fraction and said Suburban Estates to the northeast corner of said fraction and said subdivision; thence run northerly along the west line of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE1/4) of said Section 32 to the north line of said section; thence run westerly along the north line of said section and the south line of Homewood Subdivision (Plat Book 7, Page 52, Lee County Records) to the southwest corner of the Southeast Quarter (SE1/4) of Section 29; thence run northerly along the west line of said fraction and the west line of said Homewood Subdivision to the north line of the South Half (S1/2) of the Southwest Quarter (SW1/4) of the Northwest Quarter (NW1/4) of the Southeast Quarter (SE1/4) of said section; thence run easterly along said north line to the northeast corner of said fraction; thence run northerly along the west line of the Southeast Quarter (SE 1/4) of the Northwest Quarter (NW1/4) of the Southeast Quarter (SE1/4) to the northwest corner of said fraction; thence run easterly along the north line of said fraction to the northeast corner of said fraction; thence run northerly along the west line of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE1/4) of said section to the northwest corner of said fraction; thence run easterly along the north line of said fraction to the line common to Sections 28 and 29; thence run south along said line to the corner common to Sections 28, 29, 32 and 33; thence

run easterly along said north line and the north line of said Section 33 to an intersection with the northerly line of said Colonial Boulevard; thence continue easterly along said northerly line to an intersection with the easterly line of Ortiz Avenue; thence run northerly along said easterly line to the north line of the Southeast Quarter (SE1/4) of the Southeast Quarter (SE1/4) of said Section 28; thence continue northerly along said easterly line of Ortiz Avenue and the westerly line of lands described in deed recorded in Official Record Book 1535 at Page 1993 Lee County Records to a northwest corner thereof; thence run easterly and northerly along northerly and easterly lines of said lands as described in said deed to the north line of Block 5, Beauty Heights Subdivision (Plat Book 8, Page 41, Lee County Records); thence run easterly along said north line and an easterly prolongation thereof to the line common to said Sections 28 and 27; thence run northerly along said line to the northwest corner of the Southwest Quarter (SW1/4) of said Section 27; thence run easterly along the northerly line of said fraction to an intersection with the easterly line of Interstate 75 (State Road No. 93); thence run northwesterly, northerly, northeasterly, easterly and southeasterly along said right-of-way and the right-of-way for Immokalee Road (State Road No. 82) to the east line of said Section 22; thence run southerly along said east line to the northwest corner of said Section 26; thence run easterly along said north line to the northeast corner of the West Half (W1/2) of the Northwest Quarter (NW1/4) of said Section 26; thence run southerly along the east line of said fraction to a northerly line of the Six Mile Cypress as described in Official Record Book

1608 at Page 24, Lee County Records; thence run westerly and southwesterly along the north line of said Six Mile Cypress as described in said deed to an intersection with the north line of the South Half (S1/2) of the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW1/4) of said Northwest Quarter (NW1/4); thence run westerly along said north line to the northwest corner of said fraction; thence run southerly along the west line of said fraction to the northwesterly line of the Six Mile Cypress as described in said deed recorded in Official Record Book 1608 at Page 24, Lee County Records; thence run southwesterly and southerly along said northwesterly line to an intersection with the northerly line of said Colonial Boulevard; thence run westerly along said Colonial Boulevard to an intersection with the northeasterly line of Six Mile Cypress as described in said deed recorded in Official Record Book 1608 at Page 24; thence run northwesterly, westerly, southwesterly and southerly along said Cypress as described in said deed to an intersection with said north line of Colonial Boulevard; thence run southerly across dsaid [sic] Colonial Boulevard to the easterlymost corner of lands described in City of Forth Myers Annexation Ordinance No. 2247; thence run southwesterly, westerly and southwesterly along the southeasterly line of said lands as described in said ordinance and a southwesterly prolongation thereof to an intersection with the westerly line of said Interstate 75; thence run southerly along said westerly line to an intersection with the northwesterly line of Six Mile Cypress as described in deed recorded in Official Record Book 1476 at Page 184, Lee County Records; thence run southwesterly along said

northwesterly line as described in said deed to the south line of said Section 34; thence run westerly along said south line to the southwest corner of said section; thence run southerly along the east line of said Section 4 to the northwesterly line of Six Mile Cypress as described in said deed recorded in Official Record Book Page 1476 at Page 184; thence run southwesterly along said line and the northwesterly line of Six Mile Cypress as described in deed recorded in Official Record Book 1741 at Page 1241, Lee County Records to an intersection with the easterly line of Six Mile Cypress Parkway (250 feet wide) (County Road 865); thence run northeasterly and northerly along said easterly line to an intersection with the south line of the North Half (N1/2) of the Southeast Quarter (SE1/4) of said Section 33; thence run westerly along said south line to the southwest corner of the East Half (E1/2) of the Northwest Quarter (NW1/4) of the Southeast Quarter (SE1/4) of said Section 33; thence run northerly along the west line of said fraction to the northwest corner of said fraction; thence run easterly along the north line of said fraction to an intersection with the west line of Six Mile Cypress Parkway (250 feet wide); thence run northerly along said west line to the south line of the North Half (N1/2) of the Northeast Quarter (NE1/4) of said Section 33; thence run westerly along said south line and the south line of the Northeast Quarter (NE1/4) of the Northeast Quarter (NE1/4) of said Section 33 to the southwest corner of said fraction; thence run northerly along the west line of the Northeast Quarter (NE1/4) of the Northeast Quarter (NE1/4) to an intersection with the northwesterly line of

said Colonial Boulevard; thence run southwesterly along said line to an intersection with the southerly prolongation of the easterly line of Block A, Williams Terrace (Plat Book 6, Page 33, Lee County Records); thence run northerly along said line to the northeast corner of Lot 16, Block A; thence run westerly along the north line of said lot to the northwest corner of said lot; thence run southerly along the west line of said Lot 16 and the west line of Lots 13, 14 and 15 of said Block A to the northwesterly right-of-way line of said Colonial Boulevard; thence run southwesterly along said northwesterly line to the line common to Sections 32 and 33; thence run northerly along said line to an intersection with the westerly prolongation of the south line of Lot 2, Block A, said Williams Terrace; thence easterly to the southeast corner of said Lot 2; thence northerly along the east line of said Lot 2 and Lot 1 said Block A to the north line of the Southwest Quarter (SW1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW 1/4) of said Section 33; thence run westerly along said north line to the line common to Sections 32 and 33 and the northeast corner of Myers Park Subdivision (Plat Book 6, Page 63, Lee County Records); thence run westerly along the north line of Myers Park Subdivision (Plat Book 6, Page 63, Lee County Records) to the northwest corner of said subdivision; thence run southerly along the east line of the West Half (W1/2) of the East Half (E1/2) of said Northeast Quarter (NE 1/4) of said Section 32 to the northeast corner of lands described in deed recorded in Official Record Book 1528 at Page 1576, Lee County Records; thence run westerly along the north line of said lands to the northeast corner of

lands described in deed recorded in Official Record Book 1536 at Page 244, Lee County Records; thence run southerly along the east line of said lands to said northwesterly line at Colonial Boulevard; thence run southwesterly along said northwesterly line to an intersection with the south line of the Northeast Quarter (NE1/4) of said Section 32; thence run westerly along said south line to the east line of the West Half (W1/2) of the Northeast Quarter (NE1/4) of said Section 32; thence run northerly along the east line to the southeast corner of said Suburban Estates; thence run westerly along the south line of said subdivision to the east line of Block 31 in said subdivision; thence run southerly along said east line to an intersection with the south line of said Northeast Quarter (NE1/4); thence run westerly along said south line and the south line of said Suburban Estates to the northeast corner of the East Half (E1/2) of the West Half (W 1/2) of the Northwest Quarter (NW1/4) of the Southeast Quarter (SE1/4) of said section; thence run southerly along the east line of said fraction to said northwesterly line of Colonial Boulevard; thence run southwesterly along said northwesterly line to an intersection with the east line of the West Half (W1/2) of the West Half (W1/2) of the Northwest Quarter (NW1/4) of the Southeast Quarter (SE1/4) of said Section 32; thence run northerly along said east line to the northeast corner of said fraction and said south line of said Suburban Estates; thence run westerly along said south line and the north line of said fraction to the northeast corner of the West Half (W1/2) of the Southwest Quarter (SW1/4) of said Section 32; thence run southerly along the east line of said fraction to the northeast corner

of lands described in Official Record Book 1712, Page 4329, Lee County Records; thence run westerly along the north line of said lands to the northwest corner of said lands; thence run southerly along the westerly line of said lands to the northwesterly right-of-way line of said Colonial Boulevard; thence run southwesterly along said line to the east line of the west 456.88 feet of the Southwest Quarter (SW1/4) of the Southwest Quarter (SW1/4) of said Section 32; thence run northerly along said east line to the northeast corner of said fraction; thence run westerly along the north line of said fraction to the line common to Sections 31 and 32; thence run southerly along said line to the north right-of-way line of Colonial Boulevard; thence run west along said line to the Point of Beginning. Excepting therefrom right-of-way for Interstate 75 (State Road No. 93).

An assessment roll containing a description of the lots and lands assessed, the amount of the benefits to and the assessments against each square foot of land and the number of annual installments in which the assessment is divided has been completed by the consulting engineers and is on file with the City Clerk. All interested parties are advised that the description of the property to be assessed and the amount to be assessed to each piece or parcel of property may be ascertained at the office of the City Clerk, City of Fort Myers, Florida. Plans and specifications and estimates of the cost thereof are on file in the office of said Clerk at the City Hall in said City.

Dated this 16th day of February, 1988.

City Clerk
City of Fort Myers, Florida

SECTION 4. The City Clerk is hereby directed to mail, not later than ten (10) days prior to such hearing, a copy of the above Notice to each such property owner at his last known address, the names and addresses of such property owners to be obtained from the records of the Tax Assessor of Lee County or from such other sources as the City Clerk or consulting engineers deem reliable, proof of such mailing to be made by affidavit of the City Clerk or the consulting engineers, said proof to be filed with the City Clerk; provided, however, that failure to mail said Notice or Notices shall not invalidate any of the proceedings hereunder. The City Clerk is hereby further directed to cause said Notice to be given by two publications a week apart in a newspaper of general circulation in the City, and if there be no newspaper published in the City said Notice shall be published in like manner in a newspaper of general circulation which is published in Lee County, Florida; provided, however, that the last publication of the above Notice shall be at least one (1) week prior to the date of hearing. Such service by publication shall be verified by the affidavit of the publisher and filed with the City Clerk.

SECTION 5. At the time and place above named, the City Council shall meet as an equalization board to hear and consider complaints as to said assessments and to adjust and equalize the assessment on the basis of justice and right; and, when equalized and confirmed,

such assessments shall stand as first liens, until paid, upon the property against which such assessments are made. Provided, however, upon completion of the improvements, each assessment shall be credited prorata with the difference between the amount originally confirmed and the actual cost of the improvements, provided in no event shall the final assessments exceed the amount of benefits originally assessed. Said assessments shall be co-equal with the lien of other taxes, superior to all other liens, titles and claims, until paid. Said assessments shall bear interest at a rate not exceeding one percent (1%) per annum above the rate of interest payable on the funds to be used in connection with the improvements herein described, which rate is currently estimated to be eight percent (8%) per annum, from the date of acceptance of said improvements shall be payable in ten (10) equal yearly installments. If not paid when due, there shall be added a penalty of one percentum (1%) per month until paid; provided that said assessments may be paid without interest at any time within thirty (30) days after the improvements have been completed and accepted by the City Council. The balance due on the assessments may be paid in full at any time thereafter with interest to the next succeeding installment date; and provide further that payment of annual installments and interest earlier than due in any year shall not be discounted for early payments.

SECTION 6. This resolution shall become effective immediately upon its adoption.

PASSED IN PUBLIC SESSION of the City Council of the City of Fort Myers, Florida, this 16th day of February, A.D., 1988.

/s/ Joan Pigott Porter
Joan Pigott Porter

/s/ Veronica S. Shoemaker
Veronica S. Shoemaker

/s/ Ann M. Knight
Ann M. Knight

/s/ Wilbur C. Smith, III
Wilbur C. Smith, III

/s/ Paul B. Henderson
Paul B. Henderson
Council Members

APPROVED this 16th day of February, A.D., 1988, at 8:45 o'clock p.m.

/s/ Art N. Hamel
Arthur N. Hamel, Mayor

FILED in the Office of the City Clerk this 16th day of February, 1988.

/s/ M.W. Matz
M.W. Matz, City Clerk

I DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL THEREOF ON FILE IN MY OFFICE. WITNESS MY HAND AND SEAL OF SAID CITY THIS 26th DAY OF May, A.D. 1995.

/s/ Dale Veneziano
CITY CLERK, CITY OF
FORT MYERS, FLORIDA

[Exhibits Omitted In Printing]

RESOLUTION NO. 88-8

A RESOLUTION EQUALIZING THE ASSESSMENTS IN IMPROVEMENT DISTRICT NO 10, NORTHEAST COLONIAL SEWER AND WATER FACILITIES ALONG WINKLER AVENUE EXTENSION FROM METRO PARKWAY EAST TO INTERSTATE 75, FORT MYERS, FLORIDA, LEVYING THE SAME AS ASSESSMENTS AGAINST BENEFITTED PROPERTIES, DIRECTING THE CITY CLERK TO RECORD ASSESSMENTS IN THE IMPROVEMENT LIEN BOOK, AND ESTABLISHING PRIORITY OF LIEN AND PAYMENT OF PRINCIPAL AND INTEREST.

WHEREAS: The City Council of the City of Fort Myers, Florida, adopted Resolution No. 88-5 on the 16th day of February, 1988, approving the assessment roll prepared by the consulting engineers in Improvement District Number Ten, Northeast Colonial sewer and water facilities along Winkler Avenue Extension from Metro Parkway east to Interstate 75, and also directing that notice be given by publication and by mail to the owners of the property said district, or any other persons interested therein, and advising that the City Council would meet as an equalizing board commencing on the 7th day of March, 1988, at 7:30 o'clock p.m. to consider complaints as to the assessments appearing on said assessment roll; and subject to incidental changes, additions, substitutions and modifications as shall be deemed by the Council; and

WHEREAS: Said notice both by publication and by mail was duly given as by the law provided; and

WHEREAS: Said hearing was duly and regularly held commencing on March 7, 1988, at 7:30 o'clock p.m.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, that:

SECTION 1. The City Council, having heard property owners and other interested persons appearing before the Council as to the propriety and advisability of making improvements described in Resolution No. 88-5 of the Council adopted February 16, 1988, as to the cost thereof, as to the manner of payment of said cost, as to the equalization and adjustment of assessments on the basis of justice and right hereby determines and resolves to proceed with the said improvements according to the plans, specifications, assessment plat and estimate of cost on file.

SECTION 2. The costs of said improvements shall be paid as provided in Section 5 of that certain Resolution No. 88-5 of the City Council heretofore adopted on February 16, 1988, which section is incorporated hereby by reference as though copies in full herein.

SECTION 3. The amount of assessments, as heretofore equalized and adjusted on this date and as now appearing on the assessment roll, attached hereto as "Exhibit A", are hereby confirmed as legal, valid and binding first liens, until paid, upon the property against which such assessments are made; provided, however, that upon completion of the improvements, each assessment shall be increased or decreased prorata with the difference between the amount hereby confirmed and the actual cost of the improvement to be paid by special

assessments; provided, however, that upon completion of the improvements, each assessment shall be increased or decreased prorata with the difference between the amount hereby confirmed and the actual cost of the improvement to be paid by special assessments; provided in no event shall the final assessments, as hereby confirmed, exceed the amount of such benefits originally determined to result from the construction of such improvements. Said assessments shall be co-equal with the lien of other taxes, superior to all other liens, titles and claims, until paid. Such assessments are found and determined to be levied in direct proportion to the special and positive benefits to be received by each of the properties listed in the assessment roll from the acquisition and construction of the improvements.

SECTION 4. The City Clerk is hereby directed to record said assessments in a special book to be known as the "Improvement Lien Book, Series No. Ten".

SECTION 5. This resolution shall become effective immediately upon its adoption.

PASSED IN PUBLIC SESSION of the City Council of the City of Fort Myers, Florida, this 7th day of March, A.D., 1988.

/s/ Joan Pigott Porter
Joan Pigott Porter
/s/ Veronica S. Shoemaker
Veronica S. Shoemaker
/s/ Ann M. Knight
Ann M. Knight

/s/ Wilbur C. Smith, III
Wilbur C. Smith, III
/s/ Paul B. Henderson
Paul B. Henderson
Council Members

APPROVED this 7th day of March, A.D., 1988, at 8:15 o'clock p.m.

/s/ Art N. Hamel
Arthur N. Hamel, Mayor

FILED in the Office of the City Clerk this 7th day of March, 1988.

/s/ M.W. Matz
M.W. Matz, City Clerk

I DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL THEREOF ON FILE IN MY OFFICE. WITNESS MY HAND AND SEAL OF SAID CITY THIS 26th DAY OF May, A.D. 1995.

/s/ Dale Veneziano
CITY CLERK, CITY OF FORT MYERS, FLORIDA

[Exhibits Omitted In Printing]

RESOLUTION NO. 89-26

A RESOLUTION ADOPTING THE ASSESSMENT ROLL FOR IMPROVEMENT DISTRICT NUMBER 15, OMNI INTERSTATE PARK, PREPARED BY THE CONSULTING ENGINEERS; FIXING THE TIME AND PLACE FOR HEARING ON THE ASSESSMENT ROLL; AND PROVIDING FOR MAILING AND PUBLISHING NOTICE OF SAID HEARING, WHERE THE CITY COUNCIL SHALL CONSIDER COMPLAINTS, EQUALIZE SPECIAL ASSESSMENTS AND APPROVE AND CONFIRM SAME.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, that:

SECTION 1. The assessment roll heretofore prepared by the consulting engineers and presently on file in the office of the City Clerk be and the same is hereby approved; and it is hereby ascertained and determined that the assessments as set forth in such assessment roll are upon the property to be specially benefited by the proposed public improvements, in proportion to the benefits to be derived therefrom. Such special benefits are determined and prorated on a per acre basis against the respective property to be benefited by the proposed public improvements.

SECTION 2. The 15th day of May, 1989, at 7:30 P.M. at the City Hall in Fort Myers, Florida, is hereby fixed as the time and place at which the owners of the property to be assessed, or other persons interested therein, may appear before the City Council and be heard as to the propriety and advisability of making certain public improvements, as to the manner of payment therefore,

and as to the amount thereof to be assessed against each acre of property as improved.

SECTION 3. Notice of the above time and place of meeting shall be given to the property owners and shall be substantially the following form:

NOTICE

Notice is hereby given that the City Council of the City of Fort Myers, Florida, will meet on **May 15, 1989** at **7:30 o'clock p.m.**, in the City Hall of Fort Myers, Florida, for the purpose of hearing objections, if any, of all interested persons to the confirmation of Resolution No. 88-56 passed and adopted by the City Council of the City of Fort Myers, Florida, on October 17, 1988; determining to make certain local improvements of wastewater distribution system, water distribution system, paving improvements including the construction of Omni Boulevard, S.E. Access and Cypress Loop Road and other appurtenant facilities in Improvement District Number Fifteen, Omni Interstate Park, to be financed through special assessments and specifying the lots and parcels of land to be specially assessed therefor. Such interested persons will be heard by the City Council of the City of Fort Myers, Florida, as to propriety and advisability of making said improvements, as to the cost hereof, as to the manner of payment therefore and as to the amount thereof to be assessed against each acre of property so improved. The area to be improved is hereby described as follows:

All of that part of Section 22, Township 44 South, Range 25 East lying southwesterly of Immokalee Road (State Road 82) and easterly and southerly of Interstate 75 (State Road 93);

and All of that part of the West Half (W1/2) of the Northwest Quarter (NW1/4), Section 26, Township 44 South, Range 25 East lying northwesterly of Six Mile Cypress as described in deed recorded in Official Record Book 1608 at Page 24 and northwesterly of Audubon Tract as described in Official Record Book 1119 at page 1031, Lee County, Records;
AND
All that part of Section 27, Township 44 South, Range 25 East lying easterly of Interstate 75 (State Road 93), northerly of Colonial Boulevard (State Road 884) and northerly and northwesterly of Six Mile Cypress as described in deed recorded in Official Record Book 1608 at page 24, Lee County records. Containing 706.30 acres, more or less.

An assessment roll containing a description of the lots and lands assessed, the amount of the benefits to and the assessments against each acre of land and the number of annual installments in which the assessment is divided has been completed by the consulting engineers and is on file with the City Clerk. All interested parties are advised that the description of the property to be assessed and the amount to be assessed to each piece or parcel of property may be ascertained at the office of the City Clerk, City of Fort Myers, Florida. Plans and specifications and estimates of the cost thereof are on file in the office of said Clerk at the City Hall in said City.

Dated this 17th day of April, 1989.

_____

City Clerk
City of Fort Myers, Florida

SECTION 4. The City Clerk is hereby directed to mail, not later than ten (10) days prior to such hearing, a copy of the above Notice to each such property owner at his last known address, the names and addresses of such property owners to be obtained from the records of the Tax Assessor of Lee County or from such other sources as the City Clerk or consulting engineers deem reliable, proof of such mailing to be made by affidavit of the City Clerk or the consulting engineers, said proof to be filed with the City Clerk; provided, however, that failure to mail said Notice or Notices shall not invalidate any of the proceedings hereunder. The City Clerk is hereby further directed to cause said Notice to be given by two publications a week apart in a newspaper of general circulation in the City, and if there be no newspaper published in the City said Notice shall be published in like manner in a newspaper of general circulation which is published in Lee County, Florida; provided however, that the last publication of the above Notice shall be at least one (1) week prior to the date of hearing. Such service by publication shall be verified by the affidavit of the publisher and filed with the City Clerk.

SECTION 5. At the time and place above named, the City Council shall meet as an equalization board to hear and consider complaints as to said assessments and to adjust and equalize the assessment on the basis of justice and right; and, when equalized and confirmed, such assessments shall stand as first liens, until paid, upon the property against which such assessments are made. Provided, however, upon completion of the improvements, each assessment shall be credited prorata

with the difference between the amount originally confirmed and the actual cost of the improvements, provided in no event shall the final assessments exceed the amount of benefits originally assessed. Said assessments shall be co-equal with the lien of other taxes, superior to all other liens, titles and claims, until paid. Said assessments shall bear interest at a rate not exceeding one percent (1%) per annum above the rate of interest payable on the funds to be used in connection with the improvements herein described, which rate is currently estimated to be Eight and Three-Quarters Percent (8.75%) per annum, from the date of acceptance of said improvements shall be payable in ten (10) equal yearly installments. If not paid when due, there shall be added a penalty of one percentum (1%) per month until paid; provided that said assessments may be paid without interest at any time within thirty (30) days after the improvements have been completed and accepted by the City Council. The balance due on the assessments may be paid in full at any time thereafter with interest to the next succeeding installment date; and provided further that payment of annual installments and interest earlier than due in any year shall not be discounted for early payments.

SECTION 6. This resolution shall become effective immediately upon its adoption.

PASSED IN PUBLIC SESSION of the City Council of the City of Fort Myers, Florida, this 17th day of April, A.D., 1989.

/s/ Joan Pigott Porter
Joan Pigott Porter

Veronica S. Shoemaker

/s/ Ann M. Knight
Ann M. Knight

/s/ Richard G. Bashaw
Richard G. Bashaw

/s/ Bruce Grady
Bruce Grady
Council Members

APPROVED this 17th day of April, A.D., 1989, at 7:56 o'clock p.m.

/s/ Wilbur C. Smith
Wilbur C. Smith, III, Mayor

FILED in the Office of the City Clerk this 17th day of April, 1989.

/s/ M.W. Matz
M.W. Matz, City Clerk

I DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL THEREOF ON FILE IN MY OFFICE. WITNESS MY HAND AND SEAL OF SAID CITY THIS 26th DAY OF May, A.D. 1995.

/s/ Dale Veneziano
CITY CLERK, CITY OF FORT MYERS, FLORIDA

[Exhibits Omitted In Printing]

RESOLUTION NO. 89-32

A RESOLUTION EQUALIZING THE ASSESSMENTS IN IMPROVEMENT DISTRICT NO. 15, OMNI INTERSTATE PARK, FORT MYERS, FLORIDA, LEVYING THE SAME AS ASSESSMENTS AGAINST BENEFITTED PROPERTIES, DIRECTING THE CITY CLERK TO RECORD ASSESSMENTS IN THE IMPROVEMENT LIEN BOOK, AND ESTABLISHING PRIORITY OF LIEN AND PAYMENT OF PRINCIPAL AND INTEREST.

WHEREAS: The City Council of the City of Fort Myers, Florida, adopted Resolution No. 89-26 on the 17th day of April 1989, approving the assessment roll prepared by the consulting engineers in Improvement District Number Fifteen, Omni Interstate Park, and also directing that notice be given by publication and by mail to the owners of the property said district, or any other persons interested therein, and advising that the City Council would meet as an equalizing board commencing on the 15th day of May, 1989, at 7:30 o'clock p.m. to consider complaints as to the assessments appearing on said assessment roll; and subject to incidental changes, additions, substitutions and modifications as shall be deemed by the Council; and

WHEREAS: Said notice both by publication and by mail was duly given as by law provided; and

WHEREAS: Said hearing was duly and regularly held commencing on May 15, 1989, at 7:30 o'clock p.m.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, that:

SECTION 1. The City Council, having heard property owners and other interested persons appearing before the Council as to the propriety and advisability of making improvements described in Resolution No. 89-26 of the Council adopted April 17, 1989, as to the cost thereof, as to the manner of payment of said cost, as to the equalization and adjustment of assessments on the basis of justice and right hereby determines and resolves to proceed with the said improvements according to the plans, specifications, assessment plat and estimate of cost on file.

SECTION 2. The costs of said improvements shall be paid as provided in Section 5 of that certain Resolution No. 89-26 of the City Council heretofore adopted on April 17, 1989, which section is incorporated hereby by reference as though copies in full herein.

SECTION 3. The amount of assessments, as heretofore equalized and adjusted on this date and as now appearing on the assessment roll, attached hereto as "Exhibit A", are hereby confirmed as legal, valid and binding first liens, until paid, upon the property against which such assessments are made; provided, however,

that upon completion of the improvements, each assessment shall be increased or decreased prorata with the difference between the amount hereby confirmed and the actual cost of the improvement to be paid by special assessments; provided, however, that upon completion of the improvements, each assessment shall be increased or decreased prorata with the difference between the amount hereby confirmed and the actual cost of the improvement to be paid by special assessments; provided in no event shall the final assessments, as hereby confirmed, exceed the amount of such benefits originally determined to result from the construction of such improvements. Said assessments shall be co-equal with the lien of other taxes, superior to all other liens, titles and claims, until paid. Such assessments are found and determined to be levied in direct proportion to the special and positive benefits to be received by each of the properties listed in the assessment roll from the acquisition and construction of the improvements.

SECTION 4. The City Clerk is hereby directed to record said assessments in a special book to be known as the "Improvement Lien Book, Series No. Fifteen".

SECTION 5. This resolution shall become effective immediately upon its adoption.

PASSED IN PUBLIC SESSION of the City Council of the City of Fort Myers, Florida, this 15th day of May, A.D., 1989.

/s/ Joan Pigott Porter
Joan Pigott Porter

/s/ Veronica S. Shoemaker
Veronica S. Shoemaker

/s/ Ann M. Knight
Ann M. Knight

/s/ Richard G. Bashaw
Richard G. Bashaw

/s/ Bruce Grady
Bruce Grady
Council Members

APPROVED this 15th day of May, A.D., 1989, at 7:43 o'clock p.m.

/s/ Wilbur C. Smith
Wilbur C. Smith, III, Mayor

FILED in the Office of the City Clerk this 15th day of May, 1989.

/s/ M.W. Matz,
M.W. Matz, City Clerk

I DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL THEREOF ON FILE
IN MY OFFICE WITNESS MY HAND AND SEAL OF SAID CITY THIS 26th DAY OF May, A.D. 1995

/s/ Dale Vergiano
CITY CLERK, CITY OF
FORT MYERS, FLORIDA

[Exhibit Omitted In Printing]

RESOLUTION NO. 89-25

A RESOLUTION ADOPTING THE ASSESSMENT ROLL FOR IMPROVEMENT DISTRICT NUMBER 17, OMNI INTERSTATE PARK – ROADS – COLONIAL BOULEVARD, SIX MILE CYPRESS AND ORTIZ BOULEVARD, PREPARED BY THE CONSULTING ENGINEERS; FIXING THE TIME AND PLACE FOR HEARING ON THE ASSESSMENT ROLL; AND PROVIDING FOR MAILING AND PUBLISHING NOTICE OF SAID HEARING, WHERE THE CITY COUNCIL SHALL CONSIDER COMPLAINTS, EQUALIZE SPECIAL ASSESSMENTS AND APPROVE AND CONFIRM SAME.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, that:

SECTION 1. The assessment roll heretofore prepared by the consulting engineers and presently on file in the office of the City Clerk be and the same is hereby approved; and it is hereby ascertained and determined that the assessment as set forth in such assessment roll are upon the property to be specially benefited by the proposed public improvements, in proportion to the benefits to be derived therefrom. Such special benefits are determined and prorated on a per acre basis against the

respective property to be benefited by the proposed public improvements.

SECTION 2. The 15th day of May, 1989, at 7:30 P.M. at the City Hall in Fort Myers, Florida, is hereby fixed as the time and place at which the owners of the property to be assessed, or other persons interested therein, may appear before the City Council and be heard as to the propriety and advisability of making certain public improvements, as to the manner of payment therefore, and as to the amount thereof to be assessed against each acre of property as improved.

SECTION 3. Notice of the above time and place of meeting shall be given to the property owners and shall be substantially the following form:

NOTICE

Notice is hereby given that the City Council of the City of Fort Myers, Florida, will meet on **May 15, 1989** at **7:30 o'clock p.m.**, in the City Hall of Fort Myers, Florida, for the purpose of hearing objections, if any, of all interested persons to the confirmation of Resolution No. 88-64 passed and adopted by the City Council of the City of Fort Myers, Florida, on November 21, 1988; determining to make certain local improvements including the design and installation of roadways known as Colonial Boulevard, Six Mile Cypress and Ortiz Boulevard and other appurtenant facilities in Improvement District Number Seventeen, Omni Interstate Park – Roads, to be financed through special assessments and specifying the lots and parcels of land to be specially assessed therefor. Such interested persons will be heard by the City

Council of the City of Fort Myers, Florida, as to propriety and advisability of making said improvements, as to the cost hereof, as to the manner of payment therefore and as to the amount thereof to be assessed against each acre of property so improved. The area to be improved is hereby described as follows:

All that part of Section 22, Township 44 South, Range 25 East lying southwesterly of Immokalee Road (State Road 82) and easterly and southerly of Interstate 75 (State Road 93); and

All that part of the West Half (W 1/2) of the Northwest Quarter (NW 1/4) of Section 26, Township 44 South, Range 25 East lying northwesterly of Six Mile Cypress as described in deed recorded in Official Record Book 1608 at page 24 and northwesterly of Audubon Tract as described in Official Record Book 1119 at page 1031, Lee County records;

and

All that part of Section 27, Township 44 South, Range 25 East lying easterly of Interstate 75 (State Road 93), northerly of Colonial Boulevard (State Road 884) and northerly and northwesterly of Six Mile Cypress as described in deed recorded in Official Record Book 1608 at page 24, Lee County Records.

and

The Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4), the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4), the Northeast Quarter (NE 1/4) of the Southeast quarter (SE 1/4), less rights-of-way for Colonial Boulevard (State Road 884); and Six Mile Cypress Parkway

(County Road 865) Section 33, Township 44 South, Range 25 East;

and

The West Half (W 1/2) of Section 34 lying southerly of Colonial Boulevard (State Road 884), westerly of Interstate 75 (State Road 93) and northwesterly of Six Mile Cypress as recorded in Official Record Book 1476 at page 185 of the public records of Lee County, Township 44 South, Range 25 East, City of Fort Myers Lee County, Florida.

Containing 996.68 acres, more or less.

As assessment role containing a description of the lots and lands assessed, the amount of the benefits to and the assessments against each acre of land and the number of annual installments in which the assessment is divided has been completed by the consulting engineers and is on file with the City Clerk. All interested parties are advised that the description of the property to be assessed and the amount to be assessed to each piece or parcel of property may be ascertained at the office of the City Clerk, City of Fort Myers, Florida. Plans and specifications and estimates of the cost thereof are on file in the office of said Clerk at the City Hall in said City.

Dated this 17th day of April, 1989

/s/ _____
City Clerk
City of Fort Myers, Florida

SECTION 4. The City Clerk is hereby directed to mail, not later than ten (10) days prior to such hearing, a copy of the above Notice to each such property owner at

his last known address, the names and addresses of such property owners to be obtained from the records of the Tax Assessor of Lee County or from such other sources as the City Clerk or consulting engineers deem reliable, proof of such mailing to be made by affidavit of the City Clerk or the consulting engineers, said proof to be filed with the City Clerk; provided, however, that failure to mail said Notice or Notices shall not invalidate any of the proceedings hereunder. The City Clerk is hereby further directed to cause said Notice to be given by two publications a week apart in a newspaper of general circulation in the City, and if there be no newspaper published in the City said Notice shall be published in like manner in a newspaper of general circulation which is published in Lee County, Florida; provided, however, that the last publication of the above Notice shall be at least one (1) week prior to the date of hearing. Such service by publication shall be verified by the affidavit of the publisher and filed with the City Clerk.

SECTION 5. At the time and place above named, the City Council shall meet as an equalization board to hear and consider complaints as to said assessments and to adjust and equalize the assessment on the basis of justice and right; and, when equalized and confirmed, such assessments shall stand as first liens, until paid, upon the property against which such assessments are made. Provided, however, upon completion of the improvements, each assessment shall be credited prorata with the difference between the amount originally confirmed and the actual cost of the improvements, provided in no event shall the final assessments exceed the amount of benefits originally assessed. Said assessments shall be

co-equal with the lien of other taxes, superior to all other liens, titles and claims, until paid. Said assessments shall bear interest at a rate not exceeding one percent (1%) per annum above the rate of interest payable on the funds to be used in connection with the improvements herein described, which rate is currently estimated to be Eight and Three-Quarters Percent (8.75%) per annum, from the date of acceptance of said improvements shall be payable in ten (10) equal yearly installments. If not paid when due, there shall be added a penalty of one percentum (1%) per month until paid; provided that said assessments may be paid without interest at any time within thirty (30) days after the improvements have been completed and accepted by the City Council. The balance due on the assessments may be paid in full at any time thereafter with interest to the next succeeding installment date; and provided further that payment of annual installments and interest earlier than due in any year shall not be discounted for early payments.

SECTION 6. This resolution shall become effective immediately upon its adoption.

PASSED IN PUBLIC SESSION of the City Council of the City of Fort Myers, Florida, this 17th day of April, A.D., 1989.

/s/ Joan Pigott Porter
Joan Pigott Porter

Veronica S. Shoemaker

/s/ Ann M. Knight
Ann M. Knight

/s/ Richard G. Bashaw
Richard G. Bashaw
/s/ Bruce Grady
Bruce Grady
Council Members

APPROVED this 17th day of April, A.D., 1989, at 7:55 o'clock p.m.

/s/ Wilbur C. Smith
Wilbur C. Smith, III, Mayor

FILED in the Office of the City Clerk this 17th day of April, 1989.

/s/ M.W. Matz
M.W. Matz, City Clerk

[Exhibits Omitted In Printing]

RESOLUTION NO. 89-33

A RESOLUTION EQUALIZING THE ASSESSMENTS IN IMPROVEMENT DISTRICT NO. 17, OMNI INTERSTATE PARK – ROADS, FORT MYERS, FLORIDA, LEVYING THE SAME AS ASSESSMENTS AGAINST BENEFITTED PROPERTIES, DIRECTING THE CITY CLERK TO RECORD ASSESSMENTS IN THE IMPROVEMENT LIEN BOOK, AND ESTABLISHING PRIORITY OF LIEN AND PAYMENT OF PRINCIPAL AND INTEREST.

WHEREAS: The City Council of the City of Fort Myers, Florida, adopted Resolution No. 89-25 on the 17th

day of April, 1989, approving the assessment roll prepared by the consulting engineers in Improvement District Number Seventeen, Omni Interstate Park – Roads, and also directing that notice be given by publication and by mail to the owners of the property said district, or any other persons interested therein, and advising that the City Council would meet as an equalizing board commencing on the 15th day of May, 1989, at 7:30 o'clock p.m. to consider complaints as to the assessments appearing on said assessment roll; and subject to incidental changes, additions, substitutions and modifications as shall be deemed by the Council; and

WHEREAS: Said notice both by publication and by mail was duly given as by law provided; and

WHEREAS: Said hearing was duly and regularly held commencing on May 15, 1989, at 7:30 o'clock p.m.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, that:

SECTION 1. The City Council, having heard property owners and other interested persons appearing before the Council as to the propriety and advisability of making improvements described in Resolution No. 89-25 of the Council adopted April 17, 1989, as to the cost thereof, as to the manner of payment of said cost, as to the equalization and adjustment of assessments on the basis of justice and right hereby determines and resolves to proceed with the said improvements according to the plans, specifications, assessment plat and estimate of cost on file.

SECTION 2. The costs of said improvements shall be paid as provided in Section 5 of that certain Resolution No. 89-25 of the City Council heretofore adopted on April 17, 1989, which section is incorporated hereby by reference as though copies in full herein.

SECTION 3. The amount of assessments, as heretofore equalized and adjusted on this date as now appearing on the assessment roll, attached hereto as "Exhibit A", are hereby confirmed as legal, valid and binding first liens, until paid, upon the property against which such assessments are made; provided, however, that upon completion of the improvements, each assessment shall be increased or decreased prorata with the difference between the amount hereby confirmed and the actual cost of the improvement to be paid by special assessments; provided, however, that upon completion of the improvements, each assessment shall be increased or decreased prorata with the difference between the amount hereby confirmed and the actual cost of the improvement to be paid by special assessments; provided in no event shall the final assessments, as hereby confirmed, exceed the amount of such benefits originally determined to result from the construction of such improvements. Said assessments shall be co-equal with the lien of other taxes, superior to all other liens, titles and claims, until paid. Such assessments are found and determined to be levied in direct proportion to the special and positive benefits to be received by each of the properties listed in the assessment roll from the acquisition and construction of the improvements.

SECTION 4. The City Clerk is hereby directed to record said assessments in a special book to be known as the "Improvement Lien Book, Series No. Seventeen".

SECTION 5. This resolution shall become effective immediately upon its adoption.

PASSED IN PUBLIC SESSION of the City Council of the City of Fort Myers, Florida, this 15th day of May, A.D., 1989.

/s/ Joan Pigott Porter
Joan Pigott Porter

/s/ Veronica S. Shoemaker
Veronica S. Shoemaker

/s/ Ann M. Knight
Ann M. Knight

/s/ Richard G. Bashaw
Richard G. Bashaw

/s/ Bruce Grady
Bruce Grady
Council Members

APPROVED this 15th day of May, A.D., 1989, at 7:44 o'clock p.m.

/s/ Wilbur C. Smith
Wilbur C. Smith, III, Mayor

FILED in the Office of the City Clerk this 15th day of May, 1989.

/s/ M. W. Matz
M. W. Matz, City Clerk

I DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL THEREOF ON FILE IN MY OFFICE. WITNESS MY HAND AND SEAL OF SAID CITY THIS 26th DAY OF May, A.D. 1995.

/s/ Dale Veneziano
CITY CLERK, CITY OF FORT MYERS, FLORIDA

[Exhibits Omitted In Printing]